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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 339

Introduced by Assembly Member Harman

February 10, 2005

An act to amend Sections 16601, 16602.5, and 17900 of the Business and Professions Code, to amend Sections 167.5, 171.05, 1107.5, 1113, 1152, 1157, 2113, 6019.1, 6020.5, 8019.1, 8020.5, 12540.1, 12550.5, 15800, 16101, 16901, 16903, 16908, 16911, 16915.5, 17001, 17540.3, 17540.8, 17554.5, 17555, and 25005.1 of, to add Chapter 5.5 (commencing with Section 15900) to Title 2 of, and to add and repeal Sections 15534 and 15724 of, the Corporations Code, to amend Section 12197 of, and to repeal and add Section 12188 of, the Government Code, and to amend Section 17935 of the Revenue and Taxation Code, relating to business entities.

LEGISLATIVE COUNSEL'S DIGEST

AB 339, as amended, Harman. Limited partnerships and limited liability companies.

Existing law sets forth rules of organization and governance for limited partnerships.

This bill would revise and recast these provisions by enacting the Limited Partnership Act of 2008 and would repeal the existing provisions for limited partnerships on January 1, 2010. The bill would make other related changes.

Existing law authorizes a person who sells all or substantially all of the assets of, or the goodwill of, a business entity, including a limited liability company, to agree to refrain from carrying on a similar business within a specified geographic area, as specified. Existing law similarly authorizes a member of a limited liability company to make such an agreement upon or in anticipation of a dissolution of the company.

This bill would make a technical change to these provisions with respect to limited liability companies.

This bill would incorporate additional changes to Section 16101 of the Corporations Code, proposed by AB 2914, to be operative only if AB 2914 and this bill are both chaptered and become effective on or before January 1, 2007, and this bill is chaptered last.

This bill would incorporate additional changes to Sections 1107.5, 1113, 6019.1, 6020.5, 8019.1, 8020.5, 12540.1, 12550.5, 16915.5, and 17554.5, of the Corporations Code, proposed by AB 2341, to be operative only if AB 2341 and this bill are both chaptered and become effective on or before January 1, 2007, but AB 2341 becomes operative first, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 16601 of the Business and Professions
- 2 Code is amended to read:
- 3 16601. Any person who sells the goodwill of a business, or
- 4 any owner of a business entity selling or otherwise disposing of
- 5 all of his or her ownership interest in the business entity, or any
- 6 owner of a business entity that sells (a) all or substantially all of

1 its operating assets together with the goodwill of the business
2 entity, (b) all or substantially all of the operating assets of a
3 division or a subsidiary of the business entity together with the
4 goodwill of that division or subsidiary, or (c) all of the ownership
5 interest of any subsidiary, may agree with the buyer to refrain
6 from carrying on a similar business within a specified geographic
7 area in which the business so sold, or that of the business entity,
8 division, or subsidiary has been carried on, so long as the buyer,
9 or any person deriving title to the goodwill or ownership interest
10 from the buyer, carries on a like business therein.

11 For the purposes of this section, “business entity” means any
12 partnership (including a limited partnership or a limited liability
13 partnership), limited liability company (including a series of a
14 limited liability company formed under the laws of a jurisdiction
15 that recognizes such a series), or corporation.

16 For the purposes of this section, “owner of a business entity”
17 means any partner, in the case of a business entity that is a
18 partnership (including a limited partnership or a limited liability
19 partnership), or any member, in the case of a business entity that
20 is a limited liability company (including a series of a limited
21 liability company formed under the laws of a jurisdiction that
22 recognizes such a series), or any owner of capital stock, in the
23 case of a business entity that is a corporation.

24 For the purposes of this section, “ownership interest” means a
25 partnership interest, in the case of a business entity that is a
26 partnership (including a limited partnership a limited liability
27 partnership), a membership interest, in the case of a business
28 entity that is a limited liability company (including a series of a
29 limited liability company formed under the laws of a jurisdiction
30 that recognizes such a series), or a capital stockholder, in the case
31 of a business entity that is a corporation.

32 For the purposes of this section, “subsidiary” means any
33 business entity over which the selling business entity has voting
34 control or from which the selling business entity has a right to
35 receive a majority share of distributions upon dissolution or other
36 liquidation of the business entity (or has both voting control and
37 a right to receive these distributions.)

38 SEC. 2. Section 16602.5 of the Business and Professions
39 Code is amended to read:

1 16602.5. Any member may, upon or in anticipation of a
2 dissolution of, or the termination of his or her interest in, a
3 limited liability company (including a series of a limited liability
4 company formed under the laws of a jurisdiction recognizing
5 such a series), agree that he or she or it will not carry on a similar
6 business within a specified geographic area where the limited
7 liability company business has been transacted, so long as any
8 other member of the limited liability company, or any person
9 deriving title to the business or its goodwill from any such other
10 member of the limited liability company, carries on a like
11 business therein.

12 SEC. 3. Section 17900 of the Business and Professions Code
13 is amended to read:

14 17900. (a) As used in this chapter, “fictitious business name”
15 means:

16 (1) In the case of an individual, a name that does not include
17 the surname of the individual or a name that suggests the
18 existence of additional owners.

19 (2) In the case of a partnership or other association of persons,
20 other than a limited partnership that has filed a certificate of
21 limited partnership with the Secretary of State pursuant to
22 Section 15621 or 15902.01 of the Corporations Code, a foreign
23 limited partnership that has filed an application for registration
24 with the Secretary of State pursuant to Section 15692 or
25 15909.02 of the Corporations Code, a registered limited liability
26 partnership that has filed a registration pursuant to Section 15049
27 or 16953 of the Corporations Code, or a foreign limited liability
28 partnership that has filed an application for registration pursuant
29 to Section 15055 or 16959 of the Corporations Code, a name that
30 does not include the surname of each general partner or a name
31 that suggests the existence of additional owners.

32 (3) In the case of a corporation, any name other than the
33 corporate name stated in its articles of incorporation.

34 (4) In the case of a limited partnership that has filed a
35 certificate of limited partnership with the Secretary of State
36 pursuant to Section 15621 or 15902.01 of the Corporations Code
37 and in the case of a foreign limited partnership that has filed an
38 application for registration with the Secretary of State pursuant to
39 Section 15692 or 15902.02 of the Corporations Code, any name

1 other than the name of the limited partnership as on file with the
2 Secretary of State.

3 (5) In the case of a limited liability company, any name other
4 than the name stated in its articles of organization and in the case
5 of a foreign limited liability company that has filed an
6 application for registration with the Secretary of State pursuant to
7 Section 17451 of the Corporations Code, any name other than the
8 name of the limited liability company as on file with the
9 Secretary of State.

10 (b) A name that suggests the existence of additional owners
11 within the meaning of subdivision (a) is one which includes such
12 words as "Company," "& Company," "& Son," "& Sons," "&
13 Associates," "Brothers," and the like, but not words that merely
14 describe the business being conducted.

15 SEC. 4. Section 167.5 of the Corporations Code is amended
16 to read:

17 167.5. "Domestic limited partnership" means any limited
18 partnership formed under the laws of this state.

19 SEC. 5. Section 171.05 of the Corporations Code is amended
20 to read:

21 171.05. "Foreign limited partnership" means any limited
22 partnership, including a limited liability limited partnership,
23 formed under the laws of any state other than this state or of the
24 District of Columbia or under the laws of a foreign country.

25 SEC. 6. Section 1107.5 of the Corporations Code is amended
26 to read:

27 1107.5. (a) Upon merger pursuant to this chapter, a surviving
28 domestic or foreign corporation or other business entity shall be
29 deemed to have assumed the liability of each disappearing
30 domestic or foreign corporation or other business entity that is
31 taxed under Part 10 (commencing with Section 17001) of, or
32 under Part 11 (commencing with Section 23001) of, Division 2
33 of the Revenue and Taxation Code for the following:

34 (1) To prepare and file, or to cause to be prepared and filed,
35 tax and information returns otherwise required of that
36 disappearing entity as specified in Chapter 2 (commencing with
37 Section 18501) of Part 10.2 of Division 2 of the Revenue and
38 Taxation Code.

39 (2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 6.5. *Section 1107.5 of the Corporations Code is amended to read:*

1107.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign corporation or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

~~(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if~~ If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall ~~file the merger without the certificate of satisfaction of the Franchise Tax Board and~~ shall notify the Franchise Tax Board of the merger.

SEC. 7. Section 1113 of the Corporations Code is amended to read:

1 1113. (a) Any one or more corporations may merge with one
2 or more other business entities (Section 174.5). One or more
3 domestic corporations (Section 167) not organized under this
4 division and one or more foreign corporations (Section 171) may
5 be parties to the merger. Notwithstanding the provisions of this
6 section, the merger of any number of corporations with any
7 number of other business entities may be effected only if:

8 (1) In a merger in which a domestic corporation not organized
9 under this division or a domestic other business entity is a party,
10 it is authorized by the laws under which it is organized to effect
11 the merger.

12 (2) In a merger in which a foreign corporation is a party, it is
13 authorized by the laws under which it is organized to effect the
14 merger.

15 (3) In a merger in which a foreign other business entity is a
16 party, it is authorized by the laws under which it is organized to
17 effect the merger.

18 (b) Each corporation and each other party which desires to
19 merge shall approve, and shall be a party to, an agreement of
20 merger. Other persons, including a parent party (Section 1200),
21 may be parties to the agreement of merger. The board of each
22 corporation which desires to merge, and, if required the
23 shareholders, shall approve the agreement of merger. The
24 agreement of merger shall be approved on behalf of each party
25 by those persons required to approve the merger by the laws
26 under which it is organized. The agreement of merger shall state:

27 (1) The terms and conditions of the merger.

28 (2) The name and place of incorporation or organization of
29 each party to the merger and the identity of the surviving party.

30 (3) The amendments, if any, subject to Sections 900 and 907,
31 to the articles of the surviving corporation, if applicable, to be
32 effected by the merger. If any amendment changes the name of
33 the surviving corporation, if applicable, the new name may be,
34 subject to subdivision (b) of Section 201, the same as or similar
35 to the name of a disappearing party to the merger.

36 (4) The manner of converting the shares of each constituent
37 corporation into shares, interests, or other securities of the
38 surviving party. If any shares of any constituent corporation are
39 not to be converted solely into shares, interests or other securities
40 of the surviving party, the agreement of merger shall state (i) the

1 cash, rights, securities, or other property which the holders of
2 those shares are to receive in exchange for the shares, which
3 cash, rights, securities, or other property may be in addition to or
4 in lieu of shares, interests or other securities of the surviving
5 party, or (ii) that the shares are canceled without consideration.

6 (5) Any other details or provisions required by the laws under
7 which any party to the merger is organized, including, if a public
8 benefit corporation or a religious corporation is a party to the
9 merger, Section 6019.1, or, if a mutual benefit corporation is a
10 party to the merger, Section 8019.1, or, if a consumer
11 cooperative corporation is a party to the merger, Section 12540.1,
12 or, if a domestic limited partnership is a party to the merger,
13 Section 15678.2 or ~~15911.06~~ 15911.12, or, if a domestic
14 partnership is a party to the merger, Section 16911, or, if a
15 domestic limited liability company is a party to the merger,
16 Section 17551.

17 (6) Any other details or provisions as are desired, including,
18 without limitation, a provision for the payment of cash in lieu of
19 fractional shares or for any other arrangement with respect
20 thereto consistent with the provisions of Section 407.

21 (c) Each share of the same class or series of any constituent
22 corporation (other than the cancellation of shares held by a party
23 to the merger or its parent, or a wholly owned subsidiary of
24 either, in another constituent corporation) shall, unless all
25 shareholders of the class or series consent and except as provided
26 in Section 407, be treated equally with respect to any distribution
27 of cash, rights, securities, or other property. Notwithstanding
28 paragraph (4) of subdivision (b), the unredeemable common
29 shares of a constituent corporation may be converted only into
30 unredeemable common shares of a surviving corporation or a
31 parent party (Section 1200) or unredeemable equity securities of
32 a surviving party other than a corporation if another party to the
33 merger or its parent owns, directly or indirectly, prior to the
34 merger shares of that corporation representing more than 50
35 percent of the voting power of that corporation, unless all of the
36 shareholders of the class consent and except as provided in
37 Section 407.

38 (d) Notwithstanding its prior approval, an agreement of
39 merger may be amended prior to the filing of the agreement of
40 merger or the certificate of merger, as is applicable, if the

1 amendment is approved by the board of each constituent
2 corporation and, if the amendment changes any of the principal
3 terms of the agreement, by the outstanding shares (Section 152),
4 if required by Chapter 12 (commencing with Section 1200), in
5 the same manner as the original agreement of merger. If the
6 agreement of merger as so amended and approved is also
7 approved by each of the other parties to the agreement of merger,
8 the agreement of merger as so amended shall then constitute the
9 agreement of merger.

10 (e) The board of a constituent corporation may, in its
11 discretion, abandon a merger, subject to the contractual rights, if
12 any, of third parties, including other parties to the agreement of
13 merger, without further approval by the outstanding shares
14 (Section 152), at any time before the merger is effective.

15 (f) Each constituent corporation shall sign the agreement of
16 merger by its chairperson of the board, president or a vice
17 president and also by its secretary or an assistant secretary acting
18 on behalf of their respective corporations.

19 (g) (1) If the surviving party is a corporation or a foreign
20 corporation, or if a public benefit corporation (Section 5060), a
21 mutual benefit corporation (Section 5059), a religious
22 corporation (Section 5061), or a corporation organized under the
23 Consumer Cooperative Corporation Law (Section 12200) is a
24 party to the merger, after required approvals of the merger by
25 each constituent corporation through approval of the board
26 (Section 151) and any approval of the outstanding shares
27 (Section 152) required by Chapter 12 (commencing with Section
28 1200) and by the other parties to the merger, the surviving party
29 shall file a copy of the agreement of merger with an officers'
30 certificate of each constituent domestic and foreign corporation
31 attached stating the total number of outstanding shares or
32 membership interests of each class entitled to vote on the merger
33 (and identifying any other person or persons whose approval is
34 required), that the agreement of merger in the form attached or its
35 principal terms, as required, were approved by that corporation
36 by a vote of a number of shares or membership interests of each
37 class that equaled or exceeded the vote required, specifying each
38 class entitled to vote and the percentage vote required of each
39 class and, if applicable, by that other person or persons whose
40 approval is required, or that the merger agreement was entitled to

1 be and was approved by the board alone (as provided in Section
2 1201, in the case of corporations subject to that section). If equity
3 securities of a parent party (Section 1200) are to be issued in the
4 merger, the officers' certificate of that controlled party shall state
5 either that no vote of the shareholders of the parent party was
6 required or that the required vote was obtained. In lieu of an
7 officers' certificate, a certificate of merger, on a form prescribed
8 by the Secretary of State, shall be filed for each constituent other
9 business entity. The certificate of merger shall be executed and
10 acknowledged by each domestic constituent limited liability
11 company by all managers of the limited liability company (unless
12 a lesser number is specified in its articles of organization or
13 operating agreement) and by each domestic constituent limited
14 partnership by all general partners (unless a lesser number is
15 provided in its certificate of limited partnership or partnership
16 agreement) and by each domestic constituent general partnership
17 by two partners (unless a lesser number is provided in its
18 partnership agreement) and by each foreign constituent limited
19 liability company by one or more managers and by each foreign
20 constituent general partnership or foreign constituent limited
21 partnership by one or more general partners, and by each
22 constituent reciprocal insurer by the chairperson of the board,
23 president, or vice president, and by the secretary or assistant
24 secretary, or, if a constituent reciprocal insurer has not appointed
25 those officers, by the chairperson of the board, president, or vice
26 president, and by the secretary or assistant secretary of the
27 constituent reciprocal insurer's attorney-in-fact, and by each
28 other party to the merger by those persons required or authorized
29 to execute the certificate of merger by the laws under which that
30 party is organized, specifying for that party the provision of law
31 or other basis for the authority of the signing persons. The
32 certificate of merger shall set forth, if a vote of the shareholders,
33 members, partners, or other holders of interests of the constituent
34 other business entity was required, a statement setting forth the
35 total number of outstanding interests of each class entitled to vote
36 on the merger and that the agreement of merger in the form
37 attached or its principal terms, as required, were approved by a
38 vote of the number of interests of each class that equaled or
39 exceeded the vote required, specifying each class entitled to vote
40 and the percentage vote required of each class, and any other

1 information required to be set forth under the laws under which
2 the constituent other business entity is organized, including, if a
3 domestic limited partnership is a party to the merger, subdivision
4 (a) of Section 15678.4 or subdivision ~~(b) of Section 15911.08~~ (a)
5 *of Section 15911.14*, if a domestic partnership is a party to the
6 merger, subdivision (b) of Section 16915, and, if a domestic
7 limited liability company is a party to the merger, subdivision (a)
8 of Section 17552. The certificate of merger for each constituent
9 foreign other business entity, if any, shall also set forth the
10 statutory or other basis under which that foreign other business
11 entity is authorized by the laws under which it is organized to
12 effect the merger. The merger and any amendment of the articles
13 of the surviving corporation, if applicable, contained in the
14 agreement of merger shall be effective upon filing of the
15 agreement of merger with an officer's certificate of each
16 constituent domestic and foreign corporation and a certificate of
17 merger for each constituent other business entity, subject to
18 subdivision (c) of Section 110 and subject to the provisions of
19 subdivision (j), and the several parties thereto shall be one entity.
20 The agreement of merger shall not be filed, however, until there
21 has been filed by or on behalf of each party to the merger taxed
22 under the Corporation Tax Law, the existence of which is
23 terminated by the merger, the certificate of satisfaction of the
24 Franchise Tax Board that all taxes imposed by that law have been
25 paid or secured. If a domestic reciprocal insurer organized after
26 1974 to provide medical malpractice insurance is a party to the
27 merger, the agreement of merger or certificate of merger shall not
28 be filed until there has been filed the certificate issued by the
29 Insurance Commissioner approving the merger pursuant to
30 Section 1555 of the Insurance Code. The Secretary of State may
31 certify a copy of the agreement of merger separate from the
32 officers' certificates and certificates of merger attached thereto.
33 (2) If the surviving entity is an other business entity, and no
34 public benefit corporation (Section 5060), mutual benefit
35 corporation (Section 5059), religious corporation (Section 5061),
36 or corporation organized under the Consumer Cooperative
37 Corporation Law (Section 12200) is a party to the merger, after
38 required approvals of the merger by each constituent corporation
39 through approval of the board (Section 151) and any approval of
40 the outstanding shares (Section 152) required by Chapter 12

(commencing with Section 1200) and by the other parties to the merger, the parties to the merger shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent domestic and foreign corporation by its chairperson of the board, president or a vice president and also by its secretary or an assistant secretary and by each domestic constituent limited liability company by all managers of the limited liability company (unless a lesser number is specified in its articles of organization or operating agreement) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in its certificate of limited partnership or partnership agreement) and by each domestic constituent general partnership by two partners (unless a lesser number is provided in its partnership agreement) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent general partnership or foreign constituent limited partnership by one or more general partners, and by each constituent reciprocal insurer by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary, or, if a constituent reciprocal insurer has not appointed those officers, by the chairperson of the board, president, or vice president, and by the secretary or assistant secretary of the constituent reciprocal insurer's attorney-in-fact. The certificate of merger shall be signed by each other party to the merger by those persons required or authorized to execute the certificate of merger by the laws under which that party is organized, specifying for that party the provision of law or other basis for the authority of the signing persons. The certificate of merger shall set forth all of the following:

(A) The name, place of incorporation or organization, and the Secretary of State's file number, if any, of each party to the merger, separately identifying the disappearing parties and the surviving party.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were

1 approved by a vote of the number of shares of each class entitled
2 to vote and the percentage vote required of each class.

3 (C) The future effective date or time, not more than 90 days
4 subsequent to the date of filing of the merger, if the merger is not
5 to be effective upon the filing of the certificate of merger with
6 the office of the Secretary of State.

7 (D) A statement, by each party to the merger which is a
8 domestic corporation not organized under this division, a foreign
9 corporation, or an other business entity, of the statutory or other
10 basis under which that party is authorized by the laws under
11 which it is organized to effect the merger.

12 (E) Any other information required to be stated in the
13 certificate of merger by the laws under which each party to the
14 merger is organized, including, if a domestic limited liability
15 company is a party to the merger, subdivision (a) of Section
16 17552, if a domestic partnership is a party to the merger,
17 subdivision (b) of Section 16915, and, if a domestic limited
18 partnership is a party to the merger, subdivision (a) of Section
19 15678.4 or subdivision ~~(b) of Section 15911.08~~ *(a) of Section*
20 *15911.14*.

21 (F) Any other details or provisions that may be desired.

22 Unless a future effective date or time is provided in a
23 certificate of merger, in which event the merger shall be effective
24 at that future effective date or time, a merger shall be effective
25 upon the filing of the certificate of merger in the office of the
26 Secretary of State and the several parties thereto shall be one
27 entity. The certificate of merger shall not be filed, however, until
28 there has been filed by or on behalf of each party to the merger
29 that is taxed under the Corporation Tax Law, the existence of
30 which is terminated by the merger, the certificate of satisfaction
31 of the Franchise Tax Board that all taxes imposed by the
32 Corporation Tax Law have been paid or secured. The surviving
33 other business entity shall keep a copy of the agreement of
34 merger at its principal place of business which, for purposes of
35 this subdivision, shall be the office referred to in Section 17057 if
36 a domestic limited liability company, at the business address
37 specified in paragraph (5) of subdivision (a) of Section 17552 if
38 a foreign limited liability company, at the office referred to in
39 subdivision (a) of Section 16403 if a domestic general
40 partnership, at the business address specified in subdivision (f) of

1 Section 16911 if a foreign partnership, at the office referred to in
2 subdivision (a) of Section 15614 or in subdivision (a) of Section
3 15901.14 if a domestic limited partnership, or at the business
4 address specified in paragraph (5) of subdivision (a) of Section
5 15678.4 or in paragraph (3) of subdivision (a) of Section
6 15909.02 if a foreign limited partnership. Upon the request of a
7 holder of equity securities of a party to the merger, a person with
8 authority to do so on behalf of the surviving other business entity
9 shall promptly deliver to that holder, a copy of the agreement of
10 merger. A waiver by that holder of the rights provided in the
11 foregoing sentence shall be unenforceable. If a domestic
12 reciprocal insurer organized after 1974 to provide medical
13 malpractice insurance is a party to the merger, the agreement of
14 merger or certificate of merger shall not be filed until there has
15 been filed the certificate issued by the Insurance Commissioner
16 approving the merger in accordance with Section 1555 of the
17 Insurance Code.

18 (h) (1) A copy of an agreement of merger certified on or after
19 the effective date by an official having custody thereof has the
20 same force in evidence as the original and, except as against the
21 state, is conclusive evidence of the performance of all conditions
22 precedent to the merger, the existence on the effective date of the
23 surviving party to the merger and the performance of the
24 conditions necessary to the adoption of any amendment to the
25 articles, if applicable, contained in the agreement of merger.

26 (2) For all purposes for a merger in which the surviving entity
27 is a domestic other business entity and the filing of a certificate
28 of merger is required by paragraph (2) of subdivision (g), a copy
29 of the certificate of merger duly certified by the Secretary of
30 State is conclusive evidence of the merger of the constituent
31 corporations, either by themselves or together with the other
32 parties to the merger, into the surviving other business entity.

33 (i) (1) Upon a merger pursuant to this section, the separate
34 existences of the disappearing parties to the merger cease and the
35 surviving party to the merger shall succeed, without other
36 transfer, to all the rights and property of each of the disappearing
37 parties to the merger and shall be subject to all the debts and
38 liabilities of each in the same manner as if the surviving party to
39 the merger had itself incurred them.

1 (2) All rights of creditors and all liens upon the property of
2 each of the constituent corporations and other parties to the
3 merger shall be preserved unimpaired, provided that those liens
4 upon property of a disappearing party shall be limited to the
5 property affected thereby immediately prior to the time the
6 merger is effective.

7 (3) Any action or proceeding pending by or against any
8 disappearing corporation or disappearing party to the merger may
9 be prosecuted to judgment, which shall bind the surviving party,
10 or the surviving party may be proceeded against or substituted in
11 its place.

12 (4) If a limited partnership or a general partnership is a party
13 to the merger, nothing in this section is intended to affect the
14 liability a general partner of a disappearing limited partnership or
15 general partnership may have in connection with the debts and
16 liabilities of the disappearing limited partnership or general
17 partnership existing prior to the time the merger is effective.

18 (j) (1) The merger of domestic corporations with foreign
19 corporations or foreign other business entities in a merger in
20 which one or more other business entities is a party shall comply
21 with subdivision (a) and this subdivision.

22 (2) If the surviving party is a domestic corporation or domestic
23 other business entity, the merger proceedings with respect to that
24 party and any domestic disappearing corporation shall conform
25 to the provisions of this section. If the surviving party is a foreign
26 corporation or foreign other business entity, then, subject to the
27 requirements of subdivision (c), and of Section 407 and Chapter
28 12 (commencing with Section 1200) and Chapter 13
29 (commencing with Section 1300), and, if applicable,
30 corresponding provisions of the Nonprofit Corporation Law or
31 the Consumer Cooperative Corporation Law, with respect to any
32 domestic constituent corporations, Chapter 13 (commencing with
33 Section 17600) of Title 2.5 with respect to any domestic
34 constituent limited liability companies, Article 6 (commencing
35 with Section 16601) of Chapter 5 of Title 2 with respect to any
36 domestic constituent general partnerships, and Article 7.6
37 (commencing with Section 15679.1) of Chapter 3, and Article
38 11.5 (commencing with Section 15911.20) of Chapter 5.5, of
39 Title 2 with respect to any domestic constituent limited
40 partnerships, the merger proceedings may be in accordance with

1 the laws of the state or place of incorporation or organization of
2 the surviving party.

3 (3) If the surviving party is a domestic corporation or domestic
4 other business entity, the certificate of merger or the agreement
5 of merger with attachments shall be filed as provided in
6 subdivision (g) and thereupon, subject to subdivision (c) of
7 Section 110 or paragraph (2) of subdivision (g), as is applicable,
8 the merger shall be effective as to each domestic constituent
9 corporation and domestic constituent other business entity.

10 (4) If the surviving party is a foreign corporation or foreign
11 other business entity, the merger shall become effective in
12 accordance with the law of the jurisdiction in which the surviving
13 party is organized, but, except as provided in paragraph (5), the
14 merger shall be effective as to any domestic disappearing
15 corporation as of the time of effectiveness in the foreign
16 jurisdiction upon the filing in this state of a copy of the
17 agreement of merger with an officers' certificate of each
18 constituent foreign and domestic corporation and a certificate of
19 merger of each constituent other business entity attached, which
20 officers' certificates and certificates of merger shall conform to
21 the requirements of paragraph (1) of subdivision (g). If one or
22 more domestic other business entities is a disappearing party in a
23 merger pursuant to this subdivision in which a foreign other
24 business entity is the surviving entity, a certificate of merger
25 required by the laws under which that domestic other business
26 entity is organized, including subdivision (a) of Section 15678.4,
27 ~~subdivision (b) of Section 15911.08~~ *(a) of Section 15911.14*,
28 subdivision (b) of Section 16915, or subdivision (a) of Section
29 17552, as is applicable, shall also be filed at the same time as the
30 filing of the agreement of merger.

31 (5) If the date of the filing in this state pursuant to this
32 subdivision is more than six months after the time of the
33 effectiveness in the foreign jurisdiction, or if the powers of a
34 domestic disappearing corporation are suspended at the time of
35 effectiveness in the foreign jurisdiction, the merger shall be
36 effective as to the domestic disappearing corporation as of the
37 date of filing in this state.

38 (6) In a merger described in paragraph (3) or (4), each foreign
39 disappearing corporation that is qualified for the transaction of
40 intrastate business shall by virtue of the filing pursuant to this

subdivision, subject to subdivision (c) of Section 110, automatically surrender its right to transact intrastate business in this state. The filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision, by a disappearing foreign other business entity registered for the transaction of intrastate business in this state shall, by virtue of that filing, subject to subdivision (c) of Section 110, automatically cancels the registration for that foreign other business entity, without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each disappearing party to the merger shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 7.5. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more corporations may merge with one or more other business entities (Section 174.5). One or more domestic corporations (Section 167) not organized under this division and one or more foreign corporations (Section 171) may be parties to the merger. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic corporation not organized under this division or a domestic other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party, it is authorized by the laws under which it is organized to effect the merger.

(3) In a merger in which a foreign other business entity is a party, it is authorized by the laws under which it is organized to effect the merger.

(b) Each corporation and each other party which desires to merge shall approve, and shall be a party to, an agreement of merger. Other persons, including a parent party (Section 1200), may be parties to the agreement of merger. The board of each corporation which desires to merge, and, if required the shareholders, shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each party

1 by those persons required to approve the merger by the laws
2 under which it is organized. The agreement of merger shall state:

3 (1) The terms and conditions of the merger.

4 (2) The name and place of incorporation or organization of
5 each party to the merger and the identity of the surviving party.

6 (3) The amendments, if any, subject to Sections 900 and 907,
7 to the articles of the surviving corporation, if applicable, to be
8 effected by the merger. If any amendment changes the name of
9 the surviving corporation, if applicable, the new name may be,
10 subject to subdivision (b) of Section 201, the same as or similar
11 to the name of a disappearing party to the merger.

12 (4) The manner of converting the shares of each constituent
13 corporation into shares, interests, or other securities of the
14 surviving party. If any shares of any constituent corporation are
15 not to be converted solely into shares, interests or other securities
16 of the surviving party, the agreement of merger shall state (i) the
17 cash, rights, securities, or other property which the holders of
18 those shares are to receive in exchange for the shares, which
19 cash, rights, securities, or other property may be in addition to or
20 in lieu of shares, interests or other securities of the surviving
21 party, or (ii) that the shares are canceled without consideration.

22 (5) Any other details or provisions required by the laws under
23 which any party to the merger is organized, including, if a public
24 benefit corporation or a religious corporation is a party to the
25 merger, Section 6019.1, or, if a mutual benefit corporation is a
26 party to the merger, Section 8019.1, or, if a consumer
27 cooperative corporation is a party to the merger, Section 12540.1,
28 or, if a domestic limited partnership is a party to the merger,
29 Section 15678.2 *or* 15911.12, or, if a domestic partnership is a
30 party to the merger, Section 16911, or, if a domestic limited
31 liability company is a party to the merger, Section 17551.

32 (6) Any other details or provisions as are desired, including,
33 without limitation, a provision for the payment of cash in lieu of
34 fractional shares or for any other arrangement with respect
35 thereto consistent with the provisions of Section 407.

36 (c) Each share of the same class or series of any constituent
37 corporation (other than the cancellation of shares held by a party
38 to the merger or its parent, or a wholly owned subsidiary of
39 either, in another constituent corporation) shall, unless all
40 shareholders of the class or series consent and except as provided

1 in Section 407, be treated equally with respect to any distribution
2 of cash, rights, securities, or other property. Notwithstanding
3 paragraph (4) of subdivision (b), the ~~nonredeemable~~
4 *unredeemable* common shares of a constituent corporation may
5 be converted only into ~~nonredeemable~~ *unredeemable* common
6 shares of a surviving corporation or a parent party (Section 1200)
7 or ~~nonredeemable~~ *unredeemable* equity securities of a surviving
8 party other than a corporation if another party to the merger or its
9 parent owns, directly or indirectly, prior to the merger shares of
10 that corporation representing more than 50 percent of the voting
11 power of that corporation, unless all of the shareholders of the
12 class consent and except as provided in Section 407.

13 (d) Notwithstanding its prior approval, an agreement of
14 merger may be amended prior to the filing of the agreement of
15 merger or the certificate of merger, as is applicable, if the
16 amendment is approved by the board of each constituent
17 corporation and, if the amendment changes any of the principal
18 terms of the agreement, by the outstanding shares (Section 152),
19 if required by Chapter 12 (commencing with Section 1200), in
20 the same manner as the original agreement of merger. If the
21 agreement of merger as so amended and approved is also
22 approved by each of the other parties to the agreement of merger,
23 the agreement of merger as so amended shall then constitute the
24 agreement of merger.

25 (e) The board of a constituent corporation may, in its
26 discretion, abandon a merger, subject to the contractual rights, if
27 any, of third parties, including other parties to the agreement of
28 merger, without further approval by the outstanding shares
29 (Section 152), at any time before the merger is effective.

30 (f) Each constituent corporation shall sign the agreement of
31 merger by its chairperson of the board, president or a vice
32 president and also by its secretary or an assistant secretary acting
33 on behalf of their respective corporations.

34 (g) (1) If the surviving party is a corporation or a foreign
35 corporation, or if a public benefit corporation (Section 5060), a
36 mutual benefit corporation (Section 5059), a religious
37 corporation (Section 5061), or a corporation organized under the
38 Consumer Cooperative Corporation Law (Section 12200) is a
39 party to the merger, after required approvals of the merger by
40 each constituent corporation through approval of the board

1 (Section 151) and any approval of the outstanding shares
2 (Section 152) required by Chapter 12 (commencing with Section
3 1200) and by the other parties to the merger, the surviving party
4 shall file a copy of the agreement of merger with an officers'
5 certificate of each constituent domestic and foreign corporation
6 attached stating the total number of outstanding shares or
7 membership interests of each class entitled to vote on the merger
8 (and identifying any other person or persons whose approval is
9 required), that the agreement of merger in the form attached or its
10 principal terms, as required, were approved by that corporation
11 by a vote of a number of shares or membership interests of each
12 class that equaled or exceeded the vote required, specifying each
13 class entitled to vote and the percentage vote required of each
14 class and, if applicable, by that other person or persons whose
15 approval is required, or that the merger agreement was entitled to
16 be and was approved by the board alone (as provided in Section
17 1201, in the case of corporations subject to that section). If equity
18 securities of a parent party (Section 1200) are to be issued in the
19 merger, the officers' certificate of that controlled party shall state
20 either that no vote of the shareholders of the parent party was
21 required or that the required vote was obtained. In lieu of an
22 officers' certificate, a certificate of merger, on a form prescribed
23 by the Secretary of State, shall be filed for each constituent other
24 business entity. The certificate of merger shall be executed and
25 acknowledged by each domestic constituent limited liability
26 company by all managers of the limited liability company (unless
27 a lesser number is specified in its articles~~or~~ of organization or
28 operating agreement) and by each domestic constituent limited
29 partnership by all general partners (unless a lesser number is
30 provided in its certificate of limited partnership or partnership
31 agreement) and by each domestic constituent general partnership
32 by two partners (unless a lesser number is provided in its
33 partnership agreement) and by each foreign constituent limited
34 liability company by one or more managers and by each foreign
35 constituent general partnership or foreign constituent limited
36 partnership by one or more general partners, and by each
37 constituent reciprocal insurer by the chairperson of the board,
38 president, or vice president, and by the secretary or assistant
39 secretary, or, if a constituent reciprocal insurer has not appointed
40 those officers, by the chairperson of the board, president, or vice

1 president, and by the secretary or assistant secretary of the
2 constituent reciprocal insurer's attorney-in-fact, and by each
3 other party to the merger by those persons required or authorized
4 to execute the certificate of merger by the laws under which that
5 party is organized, specifying for that party the provision of law
6 or other basis for the authority of the signing persons. The
7 certificate of merger shall set forth, if a vote of the shareholders,
8 members, partners, or other holders of interests of the constituent
9 other business entity was required, a statement setting forth the
10 total number of outstanding interests of each class entitled to vote
11 on the merger and that the agreement of merger in the form
12 attached or its principal terms, as required, were approved by a
13 vote of the number of interests of each class that equaled or
14 exceeded the vote required, specifying each class entitled to vote
15 and the percentage vote required of each class, and any other
16 information required to be set forth under the laws under which
17 the constituent other business entity is organized, including, if a
18 domestic limited partnership is a party to the merger, subdivision
19 (a) of Section 15678.4 *or subdivision (a) of Section 15911.14*, if
20 a domestic partnership is a party to the merger, subdivision (b) of
21 Section 16915, and, if a domestic limited liability company is a
22 party to the merger, subdivision (a) of Section 17552. The
23 certificate of merger for each constituent foreign other business
24 entity, if any, shall also set forth the statutory or other basis under
25 which that foreign other business entity is authorized by the laws
26 under which it is organized to effect the merger. The merger and
27 any amendment of the articles of the surviving corporation, if
28 applicable, contained in the agreement of merger shall be
29 effective upon filing of the agreement of merger with an officer's
30 certificate of each constituent domestic and foreign corporation
31 and a certificate of merger for each constituent other business
32 entity, subject to subdivision (c) of Section 110 and subject to the
33 provisions of subdivision (j), and the several parties thereto shall
34 be one entity. ~~The agreement of merger shall not be filed,~~
35 ~~however, until there has been filed by or on behalf of each party~~
36 ~~to the merger taxed under the Bank and Corporation Tax Law,~~
37 ~~the existence of which is terminated by the merger, the certificate~~
38 ~~of satisfaction of the Franchise Tax Board that all taxes imposed~~
39 ~~by that law have been paid or secured.~~ If a domestic reciprocal
40 insurer organized after 1974 to provide medical malpractice

1 insurance is a party to the merger, the agreement of merger or
2 certificate of merger shall not be filed until there has been filed
3 the certificate issued by the Insurance Commissioner approving
4 the merger pursuant to Section 1555 of the Insurance Code. The
5 Secretary of State may certify a copy of the agreement of merger
6 separate from the officers' certificates and certificates of merger
7 attached thereto.

8 (2) If the surviving entity is an other business entity, and no
9 public benefit corporation (Section 5060), mutual benefit
10 corporation (Section 5059), religious corporation (Section 5061),
11 or corporation organized under the Consumer Cooperative
12 Corporation Law (Section 12200) is a party to the merger, after
13 required approvals of the merger by each constituent corporation
14 through approval of the board (Section 151) and any approval of
15 the outstanding shares (Section 152) required by Chapter 12
16 (commencing with Section 1200) and by the other parties to the
17 merger, the parties to the merger shall file a certificate of merger
18 in the office of, and on a form prescribed by, the Secretary of
19 State. The certificate of merger shall be executed and
20 acknowledged by each constituent domestic and foreign
21 corporation by its chairperson of the board, president or a vice
22 president and also by its secretary or an assistant secretary and by
23 each domestic constituent limited liability company by all
24 managers of the limited liability company (unless a lesser
25 number is specified in its articles of organization or operating
26 agreement) and by each domestic constituent limited partnership
27 by all general partners (unless a lesser number is provided in its
28 certificate of limited partnership or partnership agreement) and
29 by each domestic constituent general partnership by two partners
30 (unless a lesser number is provided in its partnership agreement)
31 and by each foreign constituent limited liability company by one
32 or more managers and by each foreign constituent general
33 partnership or foreign constituent limited partnership by one or
34 more general partners, and by each constituent reciprocal insurer
35 by the chairperson of the board, president, or vice president, and
36 by the secretary or assistant secretary, or, if a constituent
37 reciprocal insurer has not appointed those officers, by the
38 chairperson of the board, president, or vice president, and by the
39 secretary or assistant secretary of the constituent reciprocal
40 insurer's attorney-in-fact. The certificate of merger shall be

1 signed by each other party to the merger by those persons
2 required or authorized to execute the certificate of merger by the
3 laws under which that party is organized, specifying for that
4 party the provision of law or other basis for the authority of the
5 signing persons. The certificate of merger shall set forth all of the
6 following:

7 (A) The name, place of incorporation or organization, and the
8 Secretary of State's file number, if any, of each party to the
9 merger, separately identifying the disappearing parties and the
10 surviving party.

11 (B) If the approval of the outstanding shares of a constituent
12 corporation was required by Chapter 12 (commencing with
13 Section 1200), a statement setting forth the total number of
14 outstanding shares of each class entitled to vote on the merger
15 and that the principal terms of the agreement of merger were
16 approved by a vote of the number of shares of each class entitled
17 to vote and the percentage vote required of each class.

18 (C) The future effective date or time, not more than 90 days
19 subsequent to the date of filing of the merger, if the merger is not
20 to be effective upon the filing of the certificate of merger with
21 the office of the Secretary of State.

22 (D) A statement, by each party to the merger which is a
23 domestic corporation not organized under this division, a foreign
24 corporation, or an other business entity, of the statutory or other
25 basis under which that party is authorized by the laws under
26 which it is organized to effect the merger.

27 (E) Any other information required to be stated in the
28 certificate of merger by the laws under which each party to the
29 merger is organized, including, if a domestic limited liability
30 company is a party to the merger, subdivision (a) of Section
31 17552, if a domestic partnership is a party to the merger,
32 subdivision (b) of Section 16915, and, if a domestic limited
33 partnership is a party to the merger, subdivision (a) of Section
34 15678.4 or *subdivision (a) of Section 15911.14*.

35 (F) Any other details or provisions that may be desired.

36 Unless a future effective date or time is provided in a
37 certificate of merger, in which event the merger shall be effective
38 at that future effective date or time, a merger shall be effective
39 upon the filing of the certificate of merger in the office of the
40 Secretary of State and the several parties thereto shall be one

1 entity. ~~The certificate of merger shall not be filed, however, until~~
2 ~~there has been filed by or on behalf of each party to the merger~~
3 ~~that is taxed under the Bank and Corporation Tax Law, the~~
4 ~~existence of which is terminated by the merger, the certificate of~~
5 ~~satisfaction of the Franchise Tax Board that all taxes imposed by~~
6 ~~the Bank and Corporation Tax Law have been paid or secured.~~

7 The surviving other business entity shall keep a copy of the
8 agreement of merger at its principal place of business which, for
9 purposes of this subdivision, shall be the office referred to in
10 Section 17057 if a domestic limited liability company, at the
11 business address specified in paragraph (5) of subdivision (a) of
12 Section 17552 if a foreign limited liability company, at the office
13 referred to in subdivision (a) of Section 16403 if a domestic
14 general partnership, at the business address specified in
15 subdivision (f) of Section 16911 if a foreign partnership, at the
16 office referred to in subdivision (a) of Section 15614 *or in*
17 *subdivision (a) of Section 15901.14* if a domestic limited
18 partnership, or at the business address specified in paragraph (5)
19 of subdivision (a) of Section 15678.4 *or paragraph (3) of*
20 *subdivision (a) of Section 15909.02* if a foreign limited
21 partnership. Upon the request of a holder of equity securities of a
22 party to the merger, a person with authority to do so on behalf of
23 the surviving other business entity shall promptly deliver to that
24 holder, a copy of the agreement of merger. A waiver by that
25 holder of the rights provided in the foregoing sentence shall be
26 unenforceable. If a domestic reciprocal insurer organized after
27 1974 to provide medical malpractice insurance is a party to the
28 merger the agreement of merger or certificate of merger shall not
29 be filed until there has been filed the certificate issued by the
30 Insurance Commissioner approving the merger in accordance
31 with Section 1555 of the Insurance Code.

32 (h) (1) A copy of an agreement of merger certified on or after
33 the effective date by an official having custody thereof has the
34 same force in evidence as the original and, except as against the
35 state, is conclusive evidence of the performance of all conditions
36 precedent to the merger, the existence on the effective date of the
37 surviving party to the merger and the performance of the
38 conditions necessary to the adoption of any amendment to the
39 articles, if applicable, contained in the agreement of merger.

1 (2) For all purposes for a merger in which the surviving entity
2 is a domestic other business entity and the filing of a certificate
3 of merger is required by paragraph (2) of subdivision (g), a copy
4 of the certificate of merger duly certified by the Secretary of
5 State is conclusive evidence of the merger of the constituent
6 corporations, either by themselves or together with the other
7 parties to the merger, into the surviving other business entity.

8 (i) (1) Upon a merger pursuant to this section, the separate
9 existences of the disappearing parties to the merger cease and the
10 surviving party to the merger shall succeed, without other
11 transfer, to all the rights and property of each of the disappearing
12 parties to the merger and shall be subject to all the debts and
13 liabilities of each in the same manner as if the surviving party to
14 the merger had itself incurred them.

15 (2) All rights of creditors and all liens upon the property of
16 each of the constituent corporations and other parties to the
17 merger shall be preserved unimpaired, provided that those liens
18 upon property of a disappearing party shall be limited to the
19 property affected thereby immediately prior to the time the
20 merger is effective.

21 (3) Any action or proceeding pending by or against any
22 disappearing corporation or disappearing party to the merger may
23 be prosecuted to judgment, which shall bind the surviving party,
24 or the surviving party may be proceeded against or substituted in
25 its place.

26 (4) If a limited partnership or a general partnership is a party
27 to the merger, nothing in this section is intended to affect the
28 liability a general partner of a disappearing limited partnership or
29 general partnership may have in connection with the debts and
30 liabilities of the disappearing limited partnership or general
31 partnership existing prior to the time the merger is effective.

32 (j) (1) The merger of domestic corporations with foreign
33 corporations or foreign other business entities in a merger in
34 which one or more other business entities is a party shall comply
35 with subdivision (a) and this subdivision.

36 (2) If the surviving party is a domestic corporation or domestic
37 other business entity, the merger proceedings with respect to that
38 party and any domestic disappearing corporation shall conform
39 to the provisions of this section. If the surviving party is a foreign
40 corporation or foreign other business entity, then, subject to the

1 requirements of subdivision (c), and of Section 407 and Chapter
2 12 (commencing with Section 1200) and Chapter 13
3 (commencing with Section 1300), and, if applicable,
4 corresponding provisions of the Nonprofit Corporation Law or
5 the Consumer Cooperative Corporation Law, with respect to any
6 domestic constituent corporations, Chapter 13 (commencing with
7 Section 17600) of Title 2.5 with respect to any domestic
8 constituent limited liability companies, Article 6 (commencing
9 with Section 16601) of Chapter 5 of Title 2 with respect to any
10 domestic constituent general partnerships, and Article 7.6
11 (commencing with Section 15679.1) of Chapter 3, *and Article*
12 *11.5 (commencing with Section 15911.20) of Chapter 5.5* of Title
13 2 with respect to any domestic constituent limited partnerships,
14 the merger proceedings may be in accordance with the laws of
15 the state or place of incorporation or organization of the
16 surviving party.

17 (3) If the surviving party is a domestic corporation or domestic
18 other business entity, the certificate of merger or the agreement
19 of merger with attachments shall be filed as provided in
20 subdivision (g) and thereupon, subject to subdivision (c) of
21 Section 110 or paragraph (2) of subdivision (g), as is applicable,
22 the merger shall be effective as to each domestic constituent
23 corporation and domestic constituent other business entity.

24 (4) If the surviving party is a foreign corporation or foreign
25 other business entity, the merger shall become effective in
26 accordance with the law of the jurisdiction in which the surviving
27 party is organized, but, except as provided in paragraph (5), the
28 merger shall be effective as to any domestic disappearing
29 corporation as of the time of effectiveness in the foreign
30 jurisdiction upon the filing in this state of a copy of the
31 agreement of merger with an officers' certificate of each
32 constituent foreign and domestic corporation and a certificate of
33 merger of each constituent other business entity attached, which
34 officers' certificates and certificates of merger shall conform to
35 the requirements of paragraph (1) of subdivision (g). If one or
36 more domestic other business entities is a disappearing party in a
37 merger pursuant to this subdivision in which a foreign other
38 business entity is the surviving entity, a certificate of merger
39 required by the laws under which that domestic other business
40 entity is organized, including subdivision (a) of Section 15678.4,

1 *subdivision (a) of Section 15911.14*, subdivision (b) of Section
2 16915, or subdivision (a) of Section 17552, as is applicable, shall
3 also be filed at the same time as the filing of the agreement of
4 merger.

5 (5) If the date of the filing in this state pursuant to this
6 subdivision is more than six months after the time of the
7 effectiveness in the foreign jurisdiction, or if the powers of a
8 domestic disappearing corporation are suspended at the time of
9 effectiveness in the foreign jurisdiction, the merger shall be
10 effective as to the domestic disappearing corporation as of the
11 date of filing in this state.

12 (6) In a merger described in paragraph (3) or (4), each foreign
13 disappearing corporation that is qualified for the transaction of
14 intrastate business shall by virtue of the filing pursuant to this
15 subdivision, subject to subdivision (c) of Section 110,
16 automatically surrender its right to transact intrastate business in
17 this state. The filing of the agreement of merger or certificate of
18 merger, as is applicable, pursuant to this subdivision, by a
19 disappearing foreign other business entity registered for the
20 transaction of intrastate business in this state shall, by virtue of
21 that filing, subject to subdivision (c) of Section 110,
22 automatically cancels the registration for that foreign other
23 business entity, without the necessity of the filing of a certificate
24 of cancellation.

25 ~~(7) A certificate of satisfaction of the Franchise Tax Board for~~
26 ~~each disappearing party to the merger shall be filed when~~
27 ~~required by subdivision (g) or when required by Section 23334 of~~
28 ~~the Revenue and Taxation Code.~~

29 SEC. 8. Section 1152 of the Corporations Code is amended to
30 read:

31 1152. (a) A corporation that desires to convert to a domestic
32 other business entity shall approve a plan of conversion. The plan
33 of conversion shall state all of the following:

34 (1) The terms and conditions of the conversion.

35 (2) The jurisdiction of the organization of the converted entity
36 and of the converting corporation and the name of the converted
37 entity after conversion.

38 (3) The manner of converting the shares of each of the
39 shareholders of the converting corporation into securities of, or
40 interests in, the converted entity.

1 (4) The provisions of the governing documents for the
2 converted entity, including the partnership agreement or limited
3 liability company articles of organization and operating
4 agreement, to which the holders of interests in the converted
5 entity are to be bound.

6 (5) Any other details or provisions that are required by the
7 laws under which the converted entity is organized, or that are
8 desired by the converting corporation.

9 (b) The plan of conversion shall be approved by the board of
10 the converting corporation (Section 151), and the principal terms
11 of the plan of the conversion shall be approved by the
12 outstanding shares (Section 152) of each class of the converting
13 corporation. The approval of the outstanding shares may be given
14 before or after approval by the board. Notwithstanding the
15 foregoing, if a converting corporation is a close corporation, the
16 conversion shall be approved by the affirmative vote of at least
17 two-thirds of each class of outstanding shares of that converting
18 corporation; provided, however, that the articles may provide for
19 a lesser vote, but not less than a majority of the outstanding
20 shares of each class.

21 (c) If the corporation is converting into a general or limited
22 partnership or into a limited liability company, then in addition to
23 the approval of the shareholders set forth in subdivision (b), the
24 plan of conversion shall be approved by each shareholder who
25 will become a general partner or manager, as applicable, of the
26 converted entity pursuant to the plan of conversion unless the
27 shareholders have dissenters' rights pursuant to Section 1159 and
28 Chapter 13 (commencing with Section 1300).

29 (d) Upon the effectiveness of the conversion, all shareholders
30 of the converting corporation, except those that exercise
31 dissenters' rights as provided in Section 1159 and Chapter 13
32 (commencing with Section 1300), shall be deemed parties to any
33 agreement or agreements constituting the governing documents
34 for the converted entity adopted as part of the plan of conversion,
35 irrespective of whether or not a shareholder has executed the plan
36 of conversion or those governing documents for the converted
37 entity. Any adoption of governing documents made pursuant
38 thereto shall be effective at the effective time or date of the
39 conversion.

1 (e) Notwithstanding its prior approval by the board and the
2 outstanding shares or either of them, a plan of conversion may be
3 amended before the conversion takes effect if the amendment is
4 approved by the board and, if it changes any of the principal
5 terms of the plan of conversion, by the shareholders of the
6 converting corporation in the same manner and to the same
7 extent as was required for approval of the original plan of
8 conversion.

9 (f) A plan of conversion may be abandoned by the board of a
10 converting corporation, or by the shareholders of a converting
11 corporation if the abandonment is approved by the outstanding
12 shares, in each case in the same manner as required for approval
13 of the plan of conversion, subject to the contractual rights of third
14 parties, at any time before the conversion is effective.

15 (g) The converted entity shall keep the plan of conversion at
16 (1) the principal place of business of the converted entity if the
17 converted entity is a domestic partnership or (2) at the office at
18 which records are to be kept under Section 15614 or 15901.11 if
19 the converted entity is a domestic limited partnership or at the
20 office at which records are to be kept under Section 17057 if the
21 converted entity is a domestic limited liability company. Upon
22 the request of a shareholder of a converting corporation, the
23 authorized person on behalf of the converted entity shall
24 promptly deliver to the shareholder, at the expense of the
25 converted entity, a copy of the plan of conversion. A waiver by a
26 shareholder of the rights provided in this subdivision shall be
27 unenforceable.

28 SEC. 9. Section 1157 of the Corporations Code is amended to
29 read:

30 1157. (a) An other business entity or a foreign other business
31 entity or a foreign corporation may be converted into a
32 corporation pursuant to this chapter only if the converting entity
33 is authorized by the laws under which it is organized to effect the
34 conversion.

35 (b) An other business entity or a foreign other business entity
36 or a foreign corporation that desires to convert into a corporation
37 shall approve a plan of conversion or other instrument as is
38 required to be approved to effect the conversion pursuant to the
39 laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign corporation shall be approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation or other governing document in accordance with applicable laws.

(d) The conversion by an other business entity or a foreign other business entity or a foreign corporation shall be effective under this chapter upon the filing with the Secretary of State of the articles of incorporation of the converted corporation, containing a statement of conversion that complies with subdivision (e).

(e) A statement of conversion of an entity converting into a corporation pursuant to this chapter shall set forth all of the following:

(1) The name, form, and jurisdiction of organization of the converting entity.

(2) The Secretary of State's file number, if any, of the converting entity.

(3) If the converting entity is a foreign other business entity or a foreign corporation, the statement of conversion shall contain the following:

(A) A statement that the converting entity is authorized to effect the conversion by the laws under which it is organized.

(B) A statement that the converting entity has approved a plan of conversion or other instrument as is required to be approved to effect the conversion pursuant to the laws under which the converting entity is organized.

(C) A statement that the conversion has been approved by the number or percentage of the partners, members, shareholders, or other holders of interest of the converting entity that is required by the laws under which that entity is organized, or a greater or lesser percentage as may be set forth in the converting entity's partnership agreement, articles of organization, operating agreement, articles of incorporation, or other governing document in accordance with applicable laws.

(f) The filing with the Secretary of State of articles of incorporation containing a statement pursuant to subdivision (e) shall have the effect of the filing of a certificate of cancellation by a converting foreign limited liability company or foreign limited partnership, and no converting foreign limited liability company or foreign limited partnership that has made the filing is required to file a certificate of cancellation under Section 15696, 15909.06, or 17455 as a result of that conversion. If a converting entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SEC. 10. Section 2113 of the Corporations Code is amended to read:

2113. (a) The filing of an agreement of merger of a foreign disappearing corporation qualified to transact intrastate business in this state pursuant to Section 1103, or the filing pursuant to subdivision (d) of Section 1108 of an agreement, certificate, or other document as to a merger that includes a disappearing foreign corporation qualified to transact intrastate business, or the filing of a certificate of ownership as to a foreign subsidiary corporation qualified to transact intrastate business in this state pursuant to Section 1110, or the filing by a foreign corporation qualified to transact intrastate business in this state of an organizational document containing a statement of conversion pursuant to Section 15677.8, 15911.08, 16908, or 17540.8, constitutes the surrender by the foreign corporation of its right to engage in intrastate business within this state.

(b) With respect to corporations for which documents have not been filed as provided in subdivision (a), a certificate of surrender as prescribed by Section 2112 shall be filed by a foreign corporation qualified to transact intrastate business upon its merger into another foreign corporation.

(c) In lieu of a signature as prescribed by Section 2112, a certificate of surrender pursuant to subdivision (b) for a merged foreign corporation may be signed in the name of the surviving corporation by an officer thereof. In that case, the certificate of surrender shall be accompanied by a certificate of an authorized public official of the state or place of incorporation of the merged foreign corporation stating that the corporation has been merged into another foreign corporation and setting forth the name and

1 state or place of incorporation of the surviving foreign
2 corporation.

3 SEC. 11. Section 6019.1 of the Corporations Code is
4 amended to read:

5 6019.1. (a) Subject to the provisions of Sections 6010 and
6 9640, any one or more corporations may merge with one or more
7 other business entities (Section 5063.5). One or more other
8 domestic corporations and foreign corporations (Section 5053)
9 may be parties to the merger. Notwithstanding the provisions of
10 this section, such a merger may be effected only if:

11 (1) In a merger in which a domestic corporation or domestic
12 other business entity is a party, it is authorized by the laws under
13 which it is organized to effect the merger.

14 (2) In a merger in which a foreign corporation is a party, it is
15 authorized by the laws under which it is organized to effect the
16 merger.

17 (3) In a merger in which a foreign other business entity is a
18 party, it is authorized by the laws under which it is organized to
19 effect the merger.

20 (b) Each corporation and each other party which desires to
21 merge shall approve an agreement of merger. The board and the
22 members (Section 5034) of each corporation which desires to
23 merge, and each other person or persons, if any, whose approval
24 of an amendment of the articles of that corporation is required by
25 the articles or bylaws shall approve the agreement of merger. The
26 agreement of merger shall be approved on behalf of each other
27 party by those persons authorized or required to approve the
28 merger by the laws under which it is organized. The parties
29 desiring to merge shall be parties to the agreement of merger and
30 other persons, including a parent party (Section 5064.5), may be
31 parties to the agreement of merger. The agreement of merger
32 shall state all of the following:

33 (1) The terms and conditions of the merger.

34 (2) The name and place of incorporation or organization of
35 each party and the identity of the surviving party.

36 (3) The amendments, if any, subject to Sections 5810 and
37 5816, to the articles of the surviving corporation, if applicable, to
38 be effected by the merger. The name of the surviving corporation
39 may be, subject to subdivision (b) of Section 5122 and

1 subdivision (b) of Section 9122, the same as, or similar to, the
2 name of a disappearing party to the merger.

3 (4) The manner, if any, of converting the memberships of each
4 of the constituent corporations into shares, memberships,
5 interests, or other securities of the surviving party; and, if any
6 memberships of any of the constituent corporations are not to be
7 converted solely into shares, memberships, interests, or other
8 securities of the surviving party, the cash, rights, securities, or
9 other property which the holders of those memberships are to
10 receive in exchange for the memberships, which cash, rights,
11 securities, or other property may be in addition to, or in lieu of,
12 shares, memberships, interests, or other securities of the
13 surviving corporation or surviving other business entity.

14 (5) Any other details or provisions required by the laws under
15 which any party to the merger is organized, including, if a
16 domestic limited partnership is a party to the merger, subdivision
17 (a) of Section 15678.2 or 15911.12 or, if a domestic general
18 partnership is a party to the merger, subdivision (a) of Section
19 16911, or, if a domestic limited liability company is a party to the
20 merger, subdivision (a) of Section 17551.

21 (6) Any other details or provisions as are desired.

22 (c) Notwithstanding its prior approval, an agreement of merger
23 may be amended prior to the filing of the agreement of merger if
24 the amendment is approved by each constituent corporation in
25 the same manner as the original agreement of merger. If the
26 agreement of merger as so amended and approved is also
27 approved by each of the other parties to the agreement of merger,
28 as so amended it shall then constitute the agreement of merger.

29 (d) The board of a constituent corporation may, in its
30 discretion, abandon a merger, subject to the contractual rights, if
31 any, of third parties, including other parties to the agreement of
32 merger, without further approval by the members (Section 5034)
33 or other persons, at any time before the merger is effective.

34 (e) Each constituent corporation shall sign the agreement of
35 merger by its chairperson of the board, president or a vice
36 president, and also by its secretary or an assistant secretary acting
37 on behalf of their respective corporations.

38 (f) After required approvals of the merger by each constituent
39 corporation and each other party to the merger, the surviving
40 party shall file a copy of the agreement of merger with an

1 officers' certificate of each constituent domestic and foreign
2 corporation attached stating the total number of outstanding
3 shares or membership interests of each class, if any, entitled to
4 vote on the merger (and identifying any other person or persons
5 whose approval is required), that the agreement of merger in the
6 form attached or its principal terms, as required, were approved
7 by that corporation by a vote of a number of shares or
8 membership interests of each class entitled to vote, if any, which
9 equaled or exceeded the vote required, specifying each class
10 entitled to vote and the percentage vote required of each class,
11 and, if applicable, by that other person or persons whose
12 approval is required.

13 If equity securities of a parent party (Section 5064.5) are to be
14 issued in the merger, the officers' certificate or certificate of
15 merger of the controlled party shall state either that no vote of the
16 shareholders of the parent party was required or that the required
17 vote was obtained. The merger and any amendment of the
18 articles of the surviving corporation, if applicable, contained in
19 the agreement of merger shall be effective upon the filing of the
20 agreement of merger, subject to the provisions of subdivision (h).
21 The agreement of merger shall not be filed, however, until there
22 has been filed by or on behalf of each party to the merger taxed
23 under the Corporation Tax Law, the existence of which is
24 terminated by the merger, the certificate of satisfaction of the
25 Franchise Tax Board that all taxes imposed by that law have been
26 paid or secured. If a domestic reciprocal insurer organized after
27 1974 to provide medical malpractice insurance is a party to the
28 merger, the agreement of merger or certificate of merger shall not
29 be filed until there has been filed the certificate issued by the
30 Insurance Commissioner approving the merger pursuant to
31 Section 1555 of the Insurance Code.

32 In lieu of an officers' certificate, a certificate of merger, on a
33 form prescribed by the Secretary of State, shall be filed for each
34 constituent other business entity. The certificate of merger shall
35 be executed and acknowledged by each domestic constituent
36 limited liability company by all of the managers of the limited
37 liability company (unless a lesser number is specified in its
38 articles of organization or operating agreement) and by each
39 domestic constituent limited partnership by all general partners
40 (unless a lesser number is provided in its certificate of limited

1 partnership or partnership agreement) and by each domestic
2 constituent general partnership by two partners (unless a lesser
3 number is provided in its partnership agreement) and by each
4 foreign constituent limited liability company by one or more
5 managers and by each foreign constituent general partnership or
6 foreign constituent limited partnership by one or more general
7 partners, and by each constituent reciprocal insurer by the
8 chairperson of the board, president, or vice president, and also by
9 the secretary or assistant secretary, or, if a constituent reciprocal
10 insurer has not appointed such officers, by the chairperson of the
11 board, president, or vice president, and also by the secretary or
12 assistant secretary of the constituent reciprocal insurer's
13 attorney-in-fact, and by each other party to the merger by those
14 persons required or authorized to execute the certificate of
15 merger by the laws under which that party is organized,
16 specifying for such party the provision of law or other basis for
17 the authority of the signing persons.

18 The certificate of merger shall set forth, if a vote of the
19 shareholders, members, partners, or other holders of interests of a
20 constituent other business entity was required, a statement setting
21 forth the total number of outstanding interests of each class
22 entitled to vote on the merger and that the agreement of merger
23 or its principal terms, as required, were approved by a vote of the
24 number of interests of each class which equaled or exceeded the
25 vote required, specifying each class entitled to vote and the
26 percentage vote required of each class, and any other information
27 required to be set forth under the laws under which the
28 constituent other business entity is organized, including, if a
29 domestic limited partnership is a party to the merger, subdivision
30 (a) of Section 15678.4 or 15911.14, if a domestic general
31 partnership is a party to the merger, subdivision (b) of Section
32 16915, and, if a domestic limited liability company is a party to
33 the merger, subdivision (a) of Section 17552. The certificate of
34 merger for each constituent foreign other business entity, if any,
35 shall also set forth the statutory or other basis under which that
36 foreign other business entity is authorized by the laws under
37 which it is organized to effect the merger.

38 The Secretary of State may certify a copy of the agreement of
39 merger separate from the officers' certificates and certificates of
40 merger attached thereto.

(g) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving party to the merger, the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger, and the merger of the constituent corporations, either by themselves or together with other constituent parties, into the surviving party to the merger.

(h) (1) The merger of domestic corporations with foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivisions (a) and (f) and this subdivision.

(2) Subject to subdivision (c) of Section 5008 and paragraph (3), the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity upon filing of the agreement of merger with attachments as provided in subdivision (f).

(3) If the surviving party is a foreign corporation or foreign other business entity, except as provided in paragraph (4), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent foreign and domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of subdivision (f).

If one or more domestic other business entities is a disappearing party in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger required by the laws under which each domestic other business entity is organized, including subdivision (a) of Section 15678.4 or 15911.14, subdivision (b) of Section 16915, or subdivision (a) of Section 17552, if applicable, shall also be filed at the same time as the filing of the agreement of merger.

1 (4) If the date of the filing in this state pursuant to this
2 subdivision is more than six months after the time of the
3 effectiveness in the foreign jurisdiction, or if the powers of a
4 domestic disappearing corporation are suspended at the time of
5 effectiveness in the foreign jurisdiction, the merger shall be
6 effective as to the domestic disappearing corporation as of the
7 date of filing in this state.

8 (5) Each foreign disappearing corporation that is qualified for
9 the transaction of intrastate business shall automatically by the
10 filing pursuant to subdivision (f) surrender its right to transact
11 intrastate business as of the date of filing in this state or, if later,
12 the effective date of the merger. With respect to each foreign
13 disappearing other business entity previously registered for the
14 transaction of intrastate business in this state, the filing of the
15 agreement of merger pursuant to subdivision (f) automatically
16 has the effect of a cancellation of registration for that foreign
17 other business entity as of the date of filing in this state or, if
18 later, the effective date of the merger, without the necessity of the
19 filing of a certificate of cancellation.

20 *SEC. 11.5. Section 6019.1 of the Corporations Code is*
21 *amended to read:*

22 6019.1. (a) Subject to the provisions of Sections 6010 and
23 9640, any one or more corporations may merge with one or more
24 other business entities (Section 5063.5). One or more other
25 domestic corporations and foreign corporations (Section 5053)
26 may be parties to the merger. Notwithstanding the provisions of
27 this section, such a merger may be effected only if:

28 (1) In a merger in which a domestic corporation or domestic
29 other business entity is a party, it is authorized by the laws under
30 which it is organized to effect the merger.

31 (2) In a merger in which a foreign corporation is a party, it is
32 authorized by the laws under which it is organized to effect the
33 merger.

34 (3) In a merger in which a foreign other business entity is a
35 party, it is authorized by the laws under which it is organized to
36 effect the merger.

37 (b) Each corporation and each other party which desires to
38 merge shall approve an agreement of merger. The board and the
39 members (Section 5034) of each corporation which desires to
40 merge, and each other person or persons, if any, whose approval

1 of an amendment of the articles of that corporation is required by
2 the articles or bylaws shall approve the agreement of merger. The
3 agreement of merger shall be approved on behalf of each other
4 party by those persons authorized or required to approve the
5 merger by the laws under which it is organized. The parties
6 desiring to merge shall be parties to the agreement of merger and
7 other persons, including a parent party (Section 5064.5), may be
8 parties to the agreement of merger. The agreement of merger
9 shall state all of the following:

10 (1) The terms and conditions of the merger.

11 (2) The name and place of incorporation or organization of
12 each party and the identity of the surviving party.

13 (3) The amendments, if any, subject to Sections 5810 and
14 5816, to the articles of the surviving corporation, if applicable, to
15 be effected by the merger. The name of the surviving corporation
16 may be, subject to subdivision (b) of Section 5122 and
17 subdivision (b) of Section 9122, the same as, or similar to, the
18 name of a disappearing party to the merger.

19 (4) The manner, if any, of converting the memberships of each
20 of the constituent corporations into shares, memberships,
21 interests, or other securities of the surviving party; and, if any
22 memberships of any of the constituent corporations are not to be
23 converted solely into shares, memberships, interests, or other
24 securities of the surviving party, the cash, rights, securities, or
25 other property which the holders of those memberships are to
26 receive in exchange for the memberships, which cash, rights,
27 securities, or other property may be in addition to, or in lieu of,
28 shares, memberships, interests, or other securities of the
29 surviving corporation or surviving other business entity.

30 (5) Any other details or provisions required by the laws under
31 which any party to the merger is organized, including, if a
32 domestic limited partnership is a party to the merger, subdivision
33 (a) of Section 15678.2; or 15911.12, if a domestic general
34 partnership is a party to the merger, subdivision (a) of Section
35 16911, or, if a domestic limited liability company is a party to the
36 merger, subdivision (a) of Section 17551.

37 (6) Any other details or provisions as are desired.

38 (c) Notwithstanding its prior approval, an agreement of merger
39 may be amended prior to the filing of the agreement of merger if
40 the amendment is approved by each constituent corporation in

1 the same manner as the original agreement of merger. If the
2 agreement of merger as so amended and approved is also
3 approved by each of the other parties to the agreement of merger,
4 as so amended it shall then constitute the agreement of merger.

5 (d) The board of a constituent corporation may, in its
6 discretion, abandon a merger, subject to the contractual rights, if
7 any, of third parties, including other parties to the agreement of
8 merger, without further approval by the members (Section 5034)
9 or other persons, at any time before the merger is effective.

10 (e) Each constituent corporation shall sign the agreement of
11 merger by its chairperson of the board, president or a vice
12 president, and also by its secretary or an assistant secretary acting
13 on behalf of their respective corporations.

14 (f) After required approvals of the merger by each constituent
15 corporation and each other party to the merger, the surviving
16 party shall file a copy of the agreement of merger with an
17 officers' certificate of each constituent domestic and foreign
18 corporation attached stating the total number of outstanding
19 shares or membership interests of each class, if any, entitled to
20 vote on the merger (and identifying any other person or persons
21 whose approval is required), that the agreement of merger in the
22 form attached or its principal terms, as required, were approved
23 by that corporation by a vote of a number of shares or
24 membership interests of each class entitled to vote, if any, which
25 equaled or exceeded the vote required, specifying each class
26 entitled to vote and the percentage vote required of each class,
27 and, if applicable, by that other person or persons whose
28 approval is required.

29 If equity securities of a parent party (Section 5064.5) are to be
30 issued in the merger, the officers' certificate or certificate of
31 merger of the controlled party shall state either that no vote of the
32 shareholders of the parent party was required or that the required
33 vote was obtained. The merger and any amendment of the
34 articles of the surviving corporation, if applicable, contained in
35 the agreement of merger shall be effective upon the filing of the
36 agreement of merger, subject to the provisions of subdivision (h).
37 ~~The agreement of merger shall not be filed, however, until there~~
38 ~~has been filed by or on behalf of each party to the merger taxed~~
39 ~~under the Bank and Corporation Tax Law, the existence of which~~
40 ~~is terminated by the merger, the certificate of satisfaction of the~~

1 ~~Franchise Tax Board that all taxes imposed by that law have been~~
2 ~~paid or secured.~~ If a domestic reciprocal insurer organized after
3 1974 to provide medical malpractice insurance is a party to the
4 merger, the agreement of merger or certificate of merger shall not
5 be filed until there has been filed the certificate issued by the
6 Insurance Commissioner approving the merger pursuant to
7 Section 1555 of the Insurance Code.

8 In lieu of an officers' certificate, a certificate of merger, on a
9 form prescribed by the Secretary of State, shall be filed for each
10 constituent other business entity. The certificate of merger shall
11 be executed and acknowledged by each domestic constituent
12 limited liability company by all of the managers of the limited
13 liability company (unless a lesser number is specified in its
14 articles of organization or operating agreement) and by each
15 domestic constituent limited partnership by all general partners
16 (unless a lesser number is provided in its certificate of limited
17 partnership or partnership agreement) and by each domestic
18 constituent general partnership by two partners (unless a lesser
19 number is provided in its partnership agreement) and by each
20 foreign constituent limited liability company by one or more
21 managers and by each foreign constituent general partnership or
22 foreign constituent limited partnership by one or more general
23 partners, and by each constituent reciprocal insurer by the
24 chairperson of the board, president, or vice president, and also by
25 the secretary or assistant secretary, or, if a constituent reciprocal
26 insurer has not appointed such officers, by the chairperson of the
27 board, president, or vice president, and also by the secretary or
28 assistant secretary of the constituent reciprocal insurer's
29 attorney-in-fact, and by each other party to the merger by those
30 persons required or authorized to execute the certificate of
31 merger by the laws under which that party is organized,
32 specifying for such party the provision of law or other basis for
33 the authority of the signing persons.

34 The certificate of merger shall set forth, if a vote of the
35 shareholders, members, partners, or other holders of interests of a
36 constituent other business entity was required, a statement setting
37 forth the total number of outstanding interests of each class
38 entitled to vote on the merger and that the agreement of merger
39 or its principal terms, as required, were approved by a vote of the
40 number of interests of each class which equaled or exceeded the

1 vote required, specifying each class entitled to vote and the
2 percentage vote required of each class, and any other information
3 required to be set forth under the laws under which the
4 constituent other business entity is organized, including, if a
5 domestic limited partnership is a party to the merger, subdivision
6 (a) of Section 15678.4 *or* 15911.14, if a domestic general
7 partnership is a party to the merger, subdivision (b) of Section
8 16915, and, if a domestic limited liability company is a party to
9 the merger, subdivision (a) of Section 17552. The certificate of
10 merger for each constituent foreign other business entity, if any,
11 shall also set forth the statutory or other basis under which that
12 foreign other business entity is authorized by the laws under
13 which it is organized to effect the merger.

14 The Secretary of State may certify a copy of the agreement of
15 merger separate from the officers' certificates and certificates of
16 merger attached thereto.

17 (g) A copy of an agreement of merger certified on or after the
18 effective date by an official having custody thereof has the same
19 force in evidence as the original and, except as against the state,
20 is conclusive evidence of the performance of all conditions
21 precedent to the merger, the existence on the effective date of the
22 surviving party to the merger, the performance of the conditions
23 necessary to the adoption of any amendment to the articles, if
24 applicable, contained in the agreement of merger, and the merger
25 of the constituent corporations, either by themselves or together
26 with other constituent parties, into the surviving party to the
27 merger.

28 (h) (1) The merger of domestic corporations with foreign
29 corporations or foreign other business entities in a merger in
30 which one or more other business entities is a party shall comply
31 with subdivisions (a) and (f) and this subdivision.

32 (2) Subject to subdivision (c) of Section 5008 and paragraph
33 (3), the merger shall be effective as to each domestic constituent
34 corporation and domestic constituent other business entity upon
35 filing of the agreement of merger with attachments as provided in
36 subdivision (f).

37 (3) If the surviving party is a foreign corporation or foreign
38 other business entity, except as provided in paragraph (4), the
39 merger shall be effective as to any domestic disappearing
40 corporation as of the time of effectiveness in the foreign

1 jurisdiction upon the filing in this state of a copy of the
2 agreement of merger with an officers' certificate of the surviving
3 foreign corporation and of each constituent foreign and domestic
4 corporation and a certificate of merger of each constituent other
5 business entity attached, which officers' certificates and
6 certificates of merger shall conform to the requirements of
7 subdivision (f).

8 If one or more domestic other business entities is a
9 disappearing party in a merger pursuant to this subdivision in
10 which a foreign other business entity is the surviving entity, a
11 certificate of merger required by the laws under which each
12 domestic other business entity is organized, including
13 subdivision (a) of Section 15678.4 *or* 15911.14, subdivision (b)
14 of Section 16915, or subdivision (a) of Section 17552, if
15 applicable, shall also be filed at the same time as the filing of the
16 agreement of merger.

17 (4) If the date of the filing in this state pursuant to this
18 subdivision is more than six months after the time of the
19 effectiveness in the foreign jurisdiction, or if the powers of a
20 domestic disappearing corporation are suspended at the time of
21 effectiveness in the foreign jurisdiction, the merger shall be
22 effective as to the domestic disappearing corporation as of the
23 date of filing in this state.

24 (5) Each foreign disappearing corporation that is qualified for
25 the transaction of intrastate business shall automatically by the
26 filing pursuant to subdivision (f) surrender its right to transact
27 intrastate business as of the date of filing in this state or, if later,
28 the effective date of the merger. With respect to each foreign
29 disappearing other business entity previously registered for the
30 transaction of intrastate business in this state, the filing of the
31 agreement of merger pursuant to subdivision (f) automatically
32 has the effect of a cancellation of registration for that foreign
33 other business entity as of the date of filing in this state or, if
34 later, the effective date of the merger, without the necessity of the
35 filing of a certificate of cancellation.

36 SEC. 12. Section 6020.5 of the Corporations Code is
37 amended to read:

38 6020.5. (a) Upon merger pursuant to this chapter, a surviving
39 domestic or foreign corporation or other business entity shall be
40 deemed to have assumed the liability of each disappearing

1 domestic or foreign corporation or other business entity that is
2 taxed under Part 10 (commencing with Section 17001) of, or
3 under Part 11 (commencing with Section 23001) of, Division 2
4 of the Revenue and Taxation Code for the following:

5 (1) To prepare and file, or to cause to be prepared and filed,
6 tax and information returns otherwise required of that
7 disappearing entity as specified in Chapter 2 (commencing with
8 Section 18501) of Part 10.2 of Division 2 of the Revenue and
9 Taxation Code.

10 (2) To pay any tax liability determined to be due.

11 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
12 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
13 15678.4, 15911.14, and 17552 of this code and Sections 17945,
14 17948.1, and 23334 of the Revenue and Taxation Code, if the
15 surviving entity is a domestic limited liability company, domestic
16 corporation, or registered limited liability partnership or a foreign
17 limited liability company, foreign limited liability partnership, or
18 foreign corporation that is registered or qualified to do business
19 in California, the Secretary of State shall file the merger without
20 the certificate of satisfaction of the Franchise Tax Board and
21 shall notify the Franchise Tax Board of the merger.

22 *SEC. 12.5. Section 6020.5 of the Corporations Code is*
23 *amended to read:*

24 6020.5. (a) Upon merger pursuant to this chapter, a surviving
25 domestic or foreign corporation or other business entity shall be
26 deemed to have assumed the liability of each disappearing
27 domestic or foreign corporation or other business entity that is
28 taxed under Part 10 (commencing with Section 17001) of, or
29 under Part 11 (commencing with Section 23001) of, Division 2
30 of the Revenue and Taxation Code for the following:

31 (1) To prepare and file, or to cause to be prepared and filed,
32 tax and information returns otherwise required of that
33 disappearing entity as specified in Chapter 2 (commencing with
34 Section 18501) of Part 10.2 of Division 2 of the Revenue and
35 Taxation Code.

36 (2) To pay any tax liability determined to be due.

37 (b) ~~Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,~~
38 ~~6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,~~
39 ~~15678.4, and 17552 of this code and Sections 17945, 17948.1,~~
40 ~~and 23334 of the Revenue and Taxation Code, if~~ the surviving

1 entity is a domestic limited liability company, domestic
2 corporation, or registered limited liability partnership or a foreign
3 limited liability company, foreign limited liability partnership, or
4 foreign corporation that is registered or qualified to do business
5 in California, the Secretary of State shall ~~file the merger without~~
6 ~~the certificate of satisfaction of the Franchise Tax Board and~~
7 shall notify the Franchise Tax Board of the merger.

8 SEC. 13. Section 8019.1 of the Corporations Code is
9 amended to read:

10 8019.1. (a) Subject to the provisions of Section 8010, any
11 one or more corporations may merge with one or more other
12 business entities (Section 5063.5). One or more other domestic
13 corporations, foreign corporations (Sections 5053), and foreign
14 business corporations (Section 5052) may be parties to the
15 merger. Notwithstanding the provisions of this section, such a
16 merger may be effected only if:

17 (1) In a merger in which a domestic corporation or domestic
18 other business entity is a party, it is authorized by the laws under
19 which it is organized to effect the merger.

20 (2) In a merger in which a foreign corporation or foreign
21 business corporation is a party, it is authorized by the laws under
22 which it is organized to effect the merger.

23 (3) In a merger in which a foreign other business entity is a
24 party, it is authorized by the laws under which it is organized to
25 effect the merger.

26 (b) Each corporation and each other party which desires to
27 merge shall approve an agreement of merger. The board and the
28 members (Section 5034) of each corporation which desires to
29 merge, and each other person or persons, if any, whose approval
30 of an amendment of the articles of that corporation is required by
31 the articles or bylaws shall approve the agreement of merger. The
32 agreement of merger shall be approved on behalf of each other
33 constituent party by those persons authorized or required to
34 approve the merger by the laws under which it is organized. The
35 parties desiring to merge shall be parties to the agreement of
36 merger and other persons, including a parent party (Section
37 5064.5), may be parties to the agreement of merger. The
38 agreement of merger shall state all of the following:

39 (1) The terms and conditions of the merger.

1 (2) The name and place of incorporation or organization of
2 each party and the identity of the surviving party.

3 (3) The amendments, if any, subject to Sections 7810 and
4 7816, to the articles of the surviving corporation, if applicable, to
5 be effected by the merger. The name of the surviving corporation
6 may be, subject to subdivisions (b) and (c) of Section 7122, the
7 same as or similar to the name of a disappearing party to the
8 merger.

9 (4) The manner, if any, of converting the memberships or
10 securities of each of the constituent corporations into shares,
11 memberships, interests, or other securities of the surviving party;
12 and, if any memberships or securities of any of the constituent
13 corporations are not to be converted solely into shares,
14 memberships, interests, or other securities of the surviving party,
15 cash, rights, securities, or other property which the holders of
16 those memberships or securities are to receive in exchange for
17 the memberships or securities, which cash, rights, securities, or
18 other property may be in addition to or in lieu of shares,
19 memberships, interests, or other securities of the surviving party.

20 (5) Any other details or provisions required by the laws under
21 which any party to the merger is organized, including, if a
22 domestic limited partnership is a party to the merger, subdivision
23 (a) of Section 15678.2 or 15911.12, or, if a domestic general
24 partnership is a party to the merger, subdivision (a) of Section
25 16911, or, if a domestic limited liability company is a party to the
26 merger, subdivision (a) of Section 17551.

27 (6) Any other details or provisions as are desired.

28 (c) Each membership of the same class of any constituent
29 corporation (other than the cancellation of memberships held by
30 a party to the merger or its parent or a wholly owned subsidiary
31 of either in another constituent corporation) shall be treated
32 equally with respect to any distribution of cash, property, rights,
33 or securities unless (i) all members of the class consent or (ii) the
34 commissioner has approved the terms and conditions of the
35 transaction and the fairness of those terms pursuant to Section
36 25142.

37 (d) Notwithstanding its prior approval, an agreement of
38 merger may be amended prior to the filing of the agreement of
39 merger if the amendment is approved by each constituent
40 corporation in the same manner as the original agreement of

1 merger. If the agreement of merger as so amended and approved
2 is also approved by each of the other parties to the agreement of
3 merger, as so amended it shall then constitute the agreement of
4 merger.

5 (e) The board of a constituent corporation may, in its
6 discretion, abandon a merger, subject to the contractual rights, if
7 any, of third parties, including other parties to the agreement of
8 merger, without further approval by the members (Section 5034)
9 or other persons, at any time before the merger is effective.

10 (f) Each constituent corporation shall sign the agreement of
11 merger by its chairperson of the board, president, or a vice
12 president and also by its secretary or an assistant secretary acting
13 on behalf of their respective corporations.

14 (g) After required approvals of the merger by each constituent
15 corporation and each other party to the merger, the surviving
16 party shall file a copy of the agreement of merger with an
17 officers' certificate of each constituent domestic corporation,
18 foreign corporation, and foreign business corporation attached
19 stating the total number of outstanding shares or membership
20 interests of each class entitled to vote on the merger (and
21 identifying any other person or persons whose approval is
22 required), that the agreement of merger in the form attached or its
23 principal terms, as required, were approved by that corporation
24 by a vote of a number of shares or membership interests of each
25 class which equaled or exceeded the vote required, specifying
26 each class entitled to vote required of each class, and, if
27 applicable, by such other person or persons whose approval is
28 required.

29 If equity securities of a parent party (Section 5064.5) are to be
30 issued in the merger, the officers' certificate or certificate of
31 merger of the controlled party shall state either that no vote of the
32 shareholders of the parent party was required or that the required
33 vote was obtained. The merger and any amendment of the
34 articles of the surviving corporation, if applicable, contained in
35 the agreement of merger shall be effective upon the filing of the
36 agreement of merger, subject to the provisions of subdivision (i).
37 The agreement of merger shall not be filed, however, until there
38 has been filed by or on behalf of each party to the merger taxed
39 under the Corporation Tax Law, the existence of which is
40 terminated by the merger, the certificate of satisfaction of the

1 Franchise Tax Board that all taxes imposed by that law have been
2 paid or secured. If a domestic reciprocal insurer organized after
3 1974 to provide medical malpractice insurance is a party to the
4 merger, the agreement of merger or certificate of merger shall not
5 be filed until there has been filed the certificate issued by the
6 Insurance Commissioner approving the merger pursuant to
7 Section 1555 of the Insurance Code.

8 In lieu of an officers' certificate, a certificate of merger, on a
9 form prescribed by the Secretary of State, shall be filed for each
10 constituent other business entity. The certificate of merger shall
11 be executed and acknowledged by each domestic constituent
12 limited liability company by all of the managers of the limited
13 liability company (unless a lesser number is specified in its
14 articles of organization or operating agreement) and by each
15 domestic constituent limited partnership by all general partners
16 (unless a lesser number is provided in its certificate of limited
17 partnership or partnership agreement) and by each domestic
18 constituent general partnership by two partners (unless a lesser
19 number is provided in its partnership agreement) and by each
20 foreign constituent limited liability company by one or more
21 managers and by each foreign constituent general partnership or
22 foreign constituent limited partnership by one or more general
23 partners, and by each constituent reciprocal insurer by the
24 chairperson of the board, president, or vice president, and by the
25 secretary or assistant secretary, or, if a constituent reciprocal
26 insurer has not appointed such officers, by the chairperson of the
27 board, president, or vice president, and by the secretary or
28 assistant secretary of the constituent reciprocal insurer's
29 attorney-in-fact, and by each other party to the merger by those
30 persons required or authorized to execute the certificate of
31 merger by the laws under which that party is organized,
32 specifying for such party the provision of law or other basis for
33 the authority of the signing persons.

34 The certificate of merger shall set forth, if a vote of the
35 shareholders, members, partners, or other holders of interests of a
36 constituent other business entity was required, a statement setting
37 forth the total number of outstanding interests of each class
38 entitled to vote on the merger and that the principal terms of the
39 agreement of merger were approved by a vote of the number of
40 interests of each class which equaled or exceeded the vote

1 required, specifying each class entitled to vote and the percentage
2 vote required of each class, and any other information required to
3 be set forth under the laws under which the constituent other
4 business entity is organized, including, if a domestic limited
5 partnership is a party to the merger, subdivision (a) of Section
6 15678.4 or 15911.14, if a domestic general partnership is a party
7 to the merger, subdivision (b) of Section 16915 and, if a domestic
8 limited liability company is a party to the merger, subdivision (a)
9 of Section 17552. The certificate of merger for each constituent
10 foreign other business entity, if any, shall also set forth the
11 statutory or other basis under which that foreign other business
12 entity is authorized by the laws under which it is organized to
13 effect the merger.

14 The Secretary of State may certify a copy of the agreement of
15 merger separate from the officers' certificates and certificates of
16 merger attached thereto.

17 (h) A copy of an agreement of merger certified on or after the
18 effective date by an official having custody thereof has the same
19 force in evidence as the original and, except as against the state,
20 is conclusive evidence of the performance of all conditions
21 precedent to the merger, the existence on the effective date of the
22 surviving party to the merger, the performance of the conditions
23 necessary to the adoption of any amendment to the articles, if
24 applicable, contained in the agreement of merger, and of the
25 merger of the constituent corporations, either by themselves or
26 together with other constituent parties, into the surviving party to
27 the merger.

28 (i) (1) The merger of domestic corporations with foreign
29 corporations or foreign other business entities in a merger in
30 which one or more other business entities is a party shall comply
31 with subdivisions (a) and (g) and this subdivision.

32 (2) Subject to subdivision (c) of Section 5008 and paragraph
33 (3), the merger shall be effective as to each domestic constituent
34 corporation and domestic constituent other business entity upon
35 filing of the agreement of merger with attachments as provided in
36 subdivision (g).

37 (3) If the surviving party is a foreign corporation or foreign
38 business corporation or foreign other business entity, except as
39 provided in paragraph (4), the merger shall be effective as to any
40 domestic disappearing corporation as of the time of effectiveness

1 in the foreign jurisdiction upon the filing in this state of a copy of
2 the agreement of merger with an officers' certificate of the
3 surviving foreign corporation or foreign business corporation and
4 of each constituent foreign and domestic corporation and a
5 certificate of merger of each constituent other business entity
6 attached, which officers' certificates and certificates of merger
7 shall conform to the requirements of subdivision (g).

8 If one or more domestic other business entities is a
9 disappearing party in a merger pursuant to this subdivision in
10 which a foreign other business entity is the surviving entity, a
11 certificate of merger required by the laws under which each
12 domestic other business entity is organized, including
13 subdivision (a) of Section 15678.4 or 15911.14, subdivision (b)
14 of Section 16915, or subdivision (a) of Section 17522, if
15 applicable, shall also be filed at the same time as the filing of the
16 agreement of merger.

17 (4) If the date of the filing in this state pursuant to this
18 subdivision is more than six months after the time of the
19 effectiveness in the foreign jurisdiction, or if the powers of a
20 domestic disappearing corporation are suspended at the time of
21 effectiveness in the foreign jurisdiction, the merger shall be
22 effective as to the domestic disappearing corporation as of the
23 date of filing in this state.

24 (5) Each foreign disappearing corporation that is qualified for
25 the transaction of intrastate business shall automatically by the
26 filing pursuant to subdivision (g) surrender its right to transact
27 intrastate business as of the date of filing in this state or, if later,
28 the effective date of the merger. With respect to each foreign
29 disappearing other business entity previously registered for the
30 transaction of intrastate business in this state, the filing of the
31 agreement of merger pursuant to subdivision (g) automatically
32 has the effect of a cancellation of registration for that foreign
33 other business entity as of the date of filing in this state or, if
34 later, the effective date of the merger, without the necessity of the
35 filing of a certificate of cancellation.

36 *SEC. 13.5. Section 8019.1 of the Corporations Code is*
37 *amended to read:*

38 8019.1. (a) Subject to the provisions of Section 8010, any
39 one or more corporations may merge with one or more other
40 business entities (Section 5063.5). One or more other domestic

1 corporations, foreign corporations (Sections 5053), and foreign
2 business corporations (Section 5052) may be parties to the
3 merger. Notwithstanding the provisions of this section, such a
4 merger may be effected only if:

5 (1) In a merger in which a domestic corporation or domestic
6 other business entity is a party, it is authorized by the laws under
7 which it is organized to effect the merger.

8 (2) In a merger in which a foreign corporation or foreign
9 business corporation is a party, it is authorized by the laws under
10 which it is organized to effect the merger.

11 (3) In a merger in which a foreign other business entity is a
12 party, it is authorized by the laws under which it is organized to
13 effect the merger.

14 (b) Each corporation and each other party which desires to
15 merge shall approve an agreement of merger. The board and the
16 members (Section 5034) of each corporation which desires to
17 merge, and each other person or persons, if any, whose approval
18 of an amendment of the articles of that corporation is required by
19 the articles or bylaws shall approve the agreement of merger. The
20 agreement of merger shall be approved on behalf of each other
21 constituent party by those persons authorized or required to
22 approve the merger by the laws under which it is organized. The
23 parties desiring to merge shall be parties to the agreement of
24 merger and other persons, including a parent party (Section
25 5064.5), may be parties to the agreement of merger. The
26 agreement of merger shall state all of the following:

27 (1) The terms and conditions of the merger.

28 (2) The name and place of incorporation or organization of
29 each party and the identity of the surviving party.

30 (3) The amendments, if any, subject to Sections 7810 and
31 7816, to the articles of the surviving corporation, if applicable, to
32 be effected by the merger. The name of the surviving corporation
33 may be, subject to subdivisions (b) and (c) of Section 7122, the
34 same as or similar to the name of a disappearing party to the
35 merger.

36 (4) The manner, if any, of converting the memberships or
37 securities of each of the constituent corporations into shares,
38 memberships, interests, or other securities of the surviving party;
39 and, if any memberships or securities of any of the constituent
40 corporations are not to be converted solely into shares,

1 memberships, interests, or other securities of the surviving party,
2 cash, rights, securities, or other property which the holders of
3 those memberships or securities are to receive in exchange for
4 the memberships or securities, which cash, rights, securities, or
5 other property may be in addition to or in lieu of shares,
6 memberships, interests, or other securities of the surviving party.

7 (5) Any other details or provisions required by the laws under
8 which any party to the merger is organized, including, if a
9 domestic limited partnership is a party to the merger, subdivision
10 (a) of Section 15678.2 *or* 15911.12, or, if a domestic general
11 partnership is a party to the merger, subdivision (a) of Section
12 16911, or, if a domestic limited liability company is a party to the
13 merger, subdivision (a) of Section 17551.

14 (6) Any other details or provisions as are desired.

15 (c) Each membership of the same class of any constituent
16 corporation (other than the cancellation of memberships held by
17 a party to the merger or its parent or a wholly owned subsidiary
18 of either in another constituent corporation) shall be treated
19 equally with respect to any distribution of cash, property, rights,
20 or securities unless (i) all members of the class consent or (ii) the
21 commissioner has approved the terms and conditions of the
22 transaction and the fairness of those terms pursuant to Section
23 25142.

24 (d) Notwithstanding its prior approval, an agreement of
25 merger may be amended prior to the filing of the agreement of
26 merger if the amendment is approved by each constituent
27 corporation in the same manner as the original agreement of
28 merger. If the agreement of merger as so amended and approved
29 is also approved by each of the other parties to the agreement of
30 merger, as so amended it shall then constitute the agreement of
31 merger.

32 (e) The board of a constituent corporation may, in its
33 discretion, abandon a merger, subject to the contractual rights, if
34 any, of third parties, including other parties to the agreement of
35 merger, without further approval by the members (Section 5034)
36 or other persons, at any time before the merger is effective.

37 (f) Each constituent corporation shall sign the agreement of
38 merger by its chairperson of the board, president, or a vice
39 president and also by its secretary or an assistant secretary acting
40 on behalf of their respective corporations.

(g) After required approvals of the merger by each constituent corporation and each other party to the merger, the surviving party shall file a copy of the agreement of merger with an officers' certificate of each constituent domestic corporation, foreign corporation, and foreign business corporation attached stating the total number of outstanding shares or membership interests of each class entitled to vote on the merger (and identifying any other person or persons whose approval is required), that the agreement of merger in the form attached or its principal terms, as required, were approved by that corporation by a vote of a number of shares or membership interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote required of each class, and, if applicable, by such other person or persons whose approval is required.

If equity securities of a parent party (Section 5064.5) are to be issued in the merger, the officers' certificate or certificate of merger of the controlled party shall state either that no vote of the shareholders of the parent party was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall be effective upon the filing of the agreement of merger, subject to the provisions of subdivision (i). ~~The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each party to the merger taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured.~~ If a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance is a party to the merger, the agreement of merger or certificate of merger shall not be filed until there has been filed the certificate issued by the Insurance Commissioner approving the merger pursuant to Section 1555 of the Insurance Code.

In lieu of an officers' certificate, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed for each constituent other business entity. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in its

1 articles of organization or operating agreement) and by each
2 domestic constituent limited partnership by all general partners
3 (unless a lesser number is provided in its certificate of limited
4 partnership or partnership agreement) and by each domestic
5 constituent general partnership by two partners (unless a lesser
6 number is provided in its partnership agreement) and by each
7 foreign constituent limited liability company by one or more
8 managers and by each foreign constituent general partnership or
9 foreign constituent limited partnership by one or more general
10 partners, and by each constituent reciprocal insurer by the
11 chairperson of the board, president, or vice president, and by the
12 secretary or assistant secretary, or, if a constituent reciprocal
13 insurer has not appointed such officers, by the chairperson of the
14 board, president, or vice president, and by the secretary or
15 assistant secretary of the constituent reciprocal insurer's
16 attorney-in-fact, and by each other party to the merger by those
17 persons required or authorized to execute the certificate of
18 merger by the laws under which that party is organized,
19 specifying for such party the provision of law or other basis for
20 the authority of the signing persons.

21 The certificate of merger shall set forth, if a vote of the
22 shareholders, members, partners, or other holders of interests of a
23 constituent other business entity was required, a statement setting
24 forth the total number of outstanding interests of each class
25 entitled to vote on the merger and that the principal terms of the
26 agreement of merger were approved by a vote of the number of
27 interests of each class which equaled or exceeded the vote
28 required, specifying each class entitled to vote and the percentage
29 vote required of each class, and any other information required to
30 be set forth under the laws under which the constituent other
31 business entity is organized, including, if a domestic limited
32 partnership is a party to the merger, subdivision (a) of Section
33 15678.4 or 15911.14, if a domestic general partnership is a party
34 to the merger, subdivision (b) of Section 16915 and, if a domestic
35 limited liability company is a party to the merger, subdivision (a)
36 of Section 17552. The certificate of merger for each constituent
37 foreign other business entity, if any, shall also set forth the
38 statutory or other basis under which that foreign other business
39 entity is authorized by the laws under which it is organized to
40 effect the merger.

1 The Secretary of State may certify a copy of the agreement of
2 merger separate from the officers' certificates and certificates of
3 merger attached thereto.

4 (h) A copy of an agreement of merger certified on or after the
5 effective date by an official having custody thereof has the same
6 force in evidence as the original and, except as against the state,
7 is conclusive evidence of the performance of all conditions
8 precedent to the merger, the existence on the effective date of the
9 surviving party to the merger, the performance of the conditions
10 necessary to the adoption of any amendment to the articles, if
11 applicable, contained in the agreement of merger, and of the
12 merger of the constituent corporations, either by themselves or
13 together with other constituent parties, into the surviving party to
14 the merger.

15 (i) (1) The merger of domestic corporations with foreign
16 corporations or foreign other business entities in a merger in
17 which one or more other business entities is a party shall comply
18 with subdivisions (a) and (g) and this subdivision.

19 (2) Subject to subdivision (c) of Section 5008 and paragraph
20 (3), the merger shall be effective as to each domestic constituent
21 corporation and domestic constituent other business entity upon
22 filing of the agreement of merger with attachments as provided in
23 subdivision (g).

24 (3) If the surviving party is a foreign corporation or foreign
25 business corporation or foreign other business entity, except as
26 provided in paragraph (4), the merger shall be effective as to any
27 domestic disappearing corporation as of the time of effectiveness
28 in the foreign jurisdiction upon the filing in this state of a copy of
29 the agreement of merger with an officers' certificate of the
30 surviving foreign corporation or foreign business corporation and
31 of each constituent foreign and domestic corporation and a
32 certificate of merger of each constituent other business entity
33 attached, which officers' certificates and certificates of merger
34 shall conform to the requirements of subdivision (g).

35 If one or more domestic other business entities is a
36 disappearing party in a merger pursuant to this subdivision in
37 which a foreign other business entity is the surviving entity, a
38 certificate of merger required by the laws under which each
39 domestic other business entity is organized, including
40 subdivision (a) of Section 15678.4 *or* 15911.14, subdivision (b)

1 of Section 16915, or subdivision (a) of Section 17522, if
2 applicable, shall also be filed at the same time as the filing of the
3 agreement of merger.

4 (4) If the date of the filing in this state pursuant to this
5 subdivision is more than six months after the time of the
6 effectiveness in the foreign jurisdiction, or if the powers of a
7 domestic disappearing corporation are suspended at the time of
8 effectiveness in the foreign jurisdiction, the merger shall be
9 effective as to the domestic disappearing corporation as of the
10 date of filing in this state.

11 (5) Each foreign disappearing corporation that is qualified for
12 the transaction of intrastate business shall automatically by the
13 filing pursuant to subdivision (g) surrender its right to transact
14 intrastate business as of the date of filing in this state or, if later,
15 the effective date of the merger. With respect to each foreign
16 disappearing other business entity previously registered for the
17 transaction of intrastate business in this state, the filing of the
18 agreement of merger pursuant to subdivision (g) automatically
19 has the effect of a cancellation of registration for that foreign
20 other business entity as of the date of filing in this state or, if
21 later, the effective date of the merger, without the necessity of the
22 filing of a certificate of cancellation.

23 SEC. 14. Section 8020.5 of the Corporations Code is
24 amended to read:

25 8020.5. (a) Upon merger pursuant to this chapter, a surviving
26 domestic or foreign corporation or other business entity shall be
27 deemed to have assumed the liability of each disappearing
28 domestic or foreign corporation or other business entity that is
29 taxed under Part 10 (commencing with Section 17001) of, or
30 under Part 11 (commencing with Section 23001) of, Division 2
31 of the Revenue and Taxation Code for the following:

32 (1) To prepare and file, or to cause to be prepared and filed,
33 tax and information returns otherwise required of that
34 disappearing entity as specified in Chapter 2 (commencing with
35 Section 18501) of Part 10.2 of Division 2 of the Revenue and
36 Taxation Code.

37 (2) To pay any tax liability determined to be due.

38 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
39 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
40 15678.4, 15911.14, and 17552 of this code and Sections 17945,

1 17948.1, and 23334 of the Revenue and Taxation Code, if the
2 surviving entity is a domestic limited liability company, domestic
3 corporation, or registered limited liability partnership or a foreign
4 limited liability company, foreign limited liability partnership, or
5 foreign corporation that is registered or qualified to do business
6 in California, the Secretary of State shall file the merger without
7 the certificate of satisfaction of the Franchise Tax Board and
8 shall notify the Franchise Tax Board of the merger.

9 *SEC. 14.5. Section 8020.5 of the Corporations Code is*
10 *amended to read:*

11 8020.5. (a) Upon merger pursuant to this chapter, a surviving
12 domestic or foreign corporation or other business entity shall be
13 deemed to have assumed the liability of each disappearing
14 domestic or foreign corporation or other business entity that is
15 taxed under Part 10 (commencing with Section 17001) of, or
16 under Part 11 (commencing with Section 23001) of, Division 2
17 of the Revenue and Taxation Code for the following:

18 (1) To prepare and file, or to cause to be prepared and filed,
19 tax and information returns otherwise required of that
20 disappearing entity as specified in Chapter 2 (commencing with
21 Section 18501) of Part 10.2 of Division 2 of the Revenue and
22 Taxation Code.

23 (2) To pay any tax liability determined to be due.

24 (b) ~~Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,~~
25 ~~6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,~~
26 ~~15678.4, and 17552 of this code and Sections 17945, 17948.1,~~
27 ~~and 23334 of the Revenue and Taxation Code, if~~ *If* the surviving
28 entity is a domestic limited liability company, domestic
29 corporation, or registered limited liability partnership or a foreign
30 limited liability company, foreign limited liability partnership, or
31 foreign corporation that is registered or qualified to do business
32 in California, the Secretary of State shall ~~file the merger without~~
33 ~~the certificate of satisfaction of the Franchise Tax Board and~~
34 ~~shall~~ notify the Franchise Tax Board of the merger.

35 *SEC. 15. Section 12540.1 of the Corporations Code is*
36 *amended to read:*

37 12540.1. (a) Any one or more corporations may merge with
38 one or more other business entities (Section 12242.5). Subject to
39 the provisions of Section 12530, one or more other domestic

1 corporations or foreign corporations (Section 12237) may be
2 parties to the merger.

3 Notwithstanding the provisions of this section, such a merger
4 may be effected only if:

5 (1) In a merger in which a domestic corporation or domestic
6 other business entity is a party, it is authorized by the laws under
7 which it is organized to effect the merger.

8 (2) In a merger in which a foreign corporation is a party, it is
9 authorized by the laws under which it is organized to effect the
10 merger.

11 (3) In a merger in which a foreign other business entity is a
12 party, it is authorized by the laws under which it is organized to
13 effect the merger.

14 (b) Each corporation, other domestic corporation, foreign
15 corporation, and other business entity which desires to merge
16 shall approve an agreement of merger. The board and the
17 members of each corporation which desires to merge shall
18 approve (Sections 12222 and 12224) the agreement of merger.
19 The agreement of merger shall be approved on behalf of each
20 other constituent party by those persons authorized or required to
21 approve the merger by the laws under which it is organized.

22 The parties desiring to merge shall be parties to the agreement
23 of merger and other persons, including a parent party (Section
24 12242.6), may be parties to the agreement of merger. The
25 agreement of merger shall state all of the following:

26 (1) The terms and conditions of the merger.

27 (2) The name and place of incorporation or organization of
28 each party and the identity of the surviving party.

29 (3) The amendments, if any, subject to Sections 12500 and
30 12507, to the articles of the surviving corporation, if applicable,
31 to be effected by the merger. The name of the surviving
32 corporation may be, subject to subdivisions (b) and (c) of Section
33 12302, the same as, or similar to, the name of a disappearing
34 party to the merger.

35 (4) The manner, if any, of converting the memberships or
36 securities of each of the constituent corporations into shares,
37 memberships, interests, or other securities of the surviving party
38 and, if any memberships or securities of any of the constituent
39 corporations are not to be converted solely into shares,
40 memberships, interests, or other securities of the surviving party,

1 the cash, rights, securities, or other property which the holders of
2 those memberships or securities are to receive in exchange for
3 the memberships or securities, which cash, rights, securities, or
4 other property may be in addition to or in lieu of shares,
5 memberships, interests, or other securities of the surviving party.

6 (5) Any other details or provisions required by the laws under
7 which any party to the merger is organized, including, if a
8 domestic limited partnership is a party to the merger, subdivision
9 (a) of Section 15678.2 or 15911.12, or, if a domestic general
10 partnership is a party to the merger, subdivision (a) of Section
11 16911, or, if a domestic limited liability company is a party to the
12 merger, subdivision (a) of Section 17551.

13 (6) Any other details or provisions as are desired.

14 (c) Each membership of the same class of any constituent
15 corporation (other than the cancellation of memberships held by
16 a party to the merger or its parent or a wholly owned subsidiary
17 of either in another constituent corporation) shall be treated
18 equally with respect to any distribution of cash, property, rights,
19 or securities unless (i) all members of the class consent or (ii) the
20 commissioner has approved the terms and conditions of the
21 transaction and the fairness of those terms pursuant to Section
22 25142.

23 (d) Notwithstanding its prior approval, an agreement of
24 merger may be amended prior to the filing of the agreement of
25 merger if the amendment is approved by each constituent
26 corporation in the same manner as the original agreement of
27 merger. If the agreement of merger as so amended and approved
28 is also approved by each of the other parties to the agreement of
29 merger, as so amended it shall then constitute the agreement of
30 merger.

31 (e) The board of a constituent corporation may, in its
32 discretion, abandon a merger, subject to the contractual rights, if
33 any, of third parties, including other parties to the agreement of
34 merger, without further approval by the members (Section
35 12224), at any time before the merger is effective.

36 (f) Each constituent corporation shall sign the agreement of
37 merger by its chairperson of the board, president, or a vice
38 president and also by its secretary or an assistant secretary acting
39 on behalf of their respective corporations.

1 (g) After required approvals of the merger by each constituent
2 corporation and each other party to the merger, the surviving
3 party shall file a copy of the agreement of merger with an
4 officers' certificate of each constituent domestic and foreign
5 corporation attached stating the total number of outstanding
6 shares or membership interests of each class entitled to vote on
7 the merger (and identifying any other person or persons whose
8 approval is required), that the agreement of merger in the form
9 attached or its principal terms, as required, were approved by that
10 corporation by a vote of a number of shares or membership
11 interests of each class which equaled or exceeded the vote
12 required, specifying each class entitled to vote and the percentage
13 vote required of each class, and, if applicable, by that other
14 person or persons whose approval is required.

15 If equity securities of a parent party (Section 12242.6) are to be
16 issued in the merger, the officers' certificate or certificate of
17 merger of the controlled party shall state either that no vote of the
18 shareholders of the parent party was required or that the required
19 vote was obtained. The merger and any amendment of the
20 articles of the surviving corporation, if applicable, contained in
21 the agreement of merger shall be effective upon the filing of the
22 agreement of merger, subject to the provisions of subdivision (i).
23 The agreement of merger shall not be filed, however, until there
24 has been filed by or on behalf of each party to the merger taxed
25 under the Corporation Tax Law, the existence of which is
26 terminated by the merger, the certificate of satisfaction of the
27 Franchise Tax Board that all taxes imposed by that law have been
28 paid or secured. If a domestic reciprocal insurer organized after
29 1974 to provide medical malpractice insurance is a party to the
30 merger, the agreement of merger or certificate of merger shall not
31 be filed until there has been filed the certificate issued by the
32 Insurance Commissioner approving the merger pursuant to
33 Section 1555 of the Insurance Code.

34 In lieu of an officers' certificate, a certificate of merger, on a
35 form prescribed by the Secretary of State, shall be filed for each
36 constituent other business entity. The certificate of merger shall
37 be executed and acknowledged by each domestic constituent
38 limited liability company by all of the managers of the limited
39 liability company (unless a lesser number is specified in its
40 articles of organization or operating agreement) and by each

1 domestic constituent limited partnership by all general partners
2 (unless a lesser number is provided in its certificate of limited
3 partnership or partnership agreement) and by each domestic
4 constituent general partnership by two partners (unless a lesser
5 number is provided in its partnership agreement) and by each
6 foreign constituent general partnership or foreign constituent
7 limited liability company by one or more managers and by each
8 foreign constituent limited partnership by one or more general
9 partners, and by each constituent reciprocal insurer by the
10 chairperson of the board, president, or vice president, and by the
11 secretary or assistant secretary, or, if a constituent reciprocal
12 insurer has not appointed such officers, by the chairperson of the
13 board, president, or vice president, and by the secretary or
14 assistant secretary of the constituent reciprocal insurer's
15 attorney-in-fact, and by each other party to the merger by those
16 persons required or authorized to execute the certificate of
17 merger by the laws under which that party is organized,
18 specifying for such party the provision of law or other basis for
19 the authority of the signing persons.

20 The certificate of merger shall set forth, if a vote of the
21 shareholders, members, partners, or other holders of interests of
22 the constituent other business entity was required, a statement
23 setting forth the total number of outstanding interests of each
24 class entitled to vote on the merger and that the agreement of
25 merger or its principal terms, as required, were approved by a
26 vote of the number of interests of each class which equaled or
27 exceeded the vote required, specifying each class entitled to vote
28 and the percentage vote required of each class, and any other
29 information required to be set forth under the laws under which
30 the constituent other business entity is organized, including, if a
31 domestic limited partnership is a party to the merger, subdivision
32 (a) of Section 15678.4 or 15911.14, if a domestic general
33 partnership is a party to the merger, subdivision (b) of Section
34 16915, and, if a domestic limited liability company is a party to
35 the merger, subdivision (a) of Section 17552. The certificate of
36 merger for each constituent foreign other business entity, if any,
37 shall also set forth the statutory or other basis under which that
38 foreign other business entity is authorized by the laws under
39 which it is organized to effect the merger.

1 The Secretary of State may certify a copy of the agreement of
2 merger separate from the officers' certificates and certificates of
3 merger attached thereto.

4 (h) A copy of an agreement of merger certified on or after the
5 effective date by an official having custody thereof has the same
6 force in evidence as the original and, except as against the state,
7 is conclusive evidence of the performance of all conditions
8 precedent to the merger, the existence on the effective date of the
9 surviving party to the merger, the performance of the conditions
10 necessary to the adoption of any amendment to the articles, if
11 applicable, contained in the agreement of merger, and of the
12 merger of the constituent corporations, either by themselves or
13 together with other constituent parties, into the surviving party to
14 the merger.

15 (i) (1) The merger of domestic corporations with foreign
16 corporations or foreign other business entities in a merger in
17 which one or more other business entities is a party shall comply
18 with subdivisions (a) and (g) and this subdivision.

19 (2) Subject to subdivision (c) of Section 12214 and paragraph
20 (3), the merger shall be effective as to each domestic constituent
21 corporation and domestic constituent other business entity upon
22 filing of the agreement of merger with attachments as provided in
23 subdivision (g).

24 (3) If the surviving party is a foreign corporation or foreign
25 other business entity, except as provided in paragraph (4), the
26 merger shall be effective as to any domestic disappearing
27 corporation as of the time of effectiveness in the foreign
28 jurisdiction upon the filing in this state of a copy of the
29 agreement of merger with an officers' certificate of the surviving
30 foreign corporation and of each constituent foreign and domestic
31 corporation and a certificate of merger of each constituent other
32 business entity attached, which officers' certificates and
33 certificates of merger shall conform to the requirements of
34 subdivision (g).

35 If one or more domestic other business entities is a
36 disappearing party in a merger pursuant to this subdivision in
37 which a foreign other business entity is the surviving entity, a
38 certificate of merger required by the laws under which each
39 domestic other business entity is organized, including
40 subdivision (a) of Section 15678.4 or 15911.14, subdivision (b)

1 of Section 16915 or subdivision (a) of Section 17552, if
2 applicable, shall also be filed at the same time as the filing of the
3 agreement of merger.

4 (4) If the date of the filing in this state pursuant to this
5 subdivision is more than six months after the time of the
6 effectiveness in the foreign jurisdiction, or if the powers of a
7 domestic disappearing corporation are suspended at the time of
8 effectiveness in the foreign jurisdiction, the merger shall be
9 effective as to the domestic disappearing corporation as of the
10 date of filing in this state.

11 (5) Each foreign disappearing corporation that is qualified for
12 the transaction of intrastate business shall automatically by the
13 filing pursuant to subdivision (g) surrender its right to transact
14 intrastate business as of the date of filing in this state or, if later,
15 the effective date of the merger. With respect to each foreign
16 disappearing other business entity previously registered for the
17 transaction of intrastate business in this state, the filing of the
18 agreement of merger pursuant to subdivision (g) automatically
19 has the effect of a cancellation of registration for that foreign
20 other business entity without the necessity of the filing of a
21 certificate of cancellation.

22 *SEC. 15.5. Section 12540.1 of the Corporations Code is*
23 *amended to read:*

24 12540.1. (a) Any one or more corporations may merge with
25 one or more other business entities (Section 12242.5). Subject to
26 the provisions of Section 12530, one or more other domestic
27 corporations or foreign corporations (Section 12237) may be
28 parties to the merger.

29 Notwithstanding the provisions of this section, such a merger
30 may be effected only if:

31 (1) In a merger in which a domestic corporation or domestic
32 other business entity is a party, it is authorized by the laws under
33 which it is organized to effect the merger.

34 (2) In a merger in which a foreign corporation is a party, it is
35 authorized by the laws under which it is organized to effect the
36 merger.

37 (3) In a merger in which a foreign other business entity is a
38 party, it is authorized by the laws under which it is organized to
39 effect the merger.

(b) Each corporation, other domestic corporation, foreign corporation, and other business entity which desires to merge shall approve an agreement of merger. The board and the members of each corporation which desires to merge shall approve (Sections 12222 and 12224) the agreement of merger. The agreement of merger shall be approved on behalf of each other constituent party by those persons authorized or required to approve the merger by the laws under which it is organized.

The parties desiring to merge shall be parties to the agreement of merger and other persons, including a parent party (Section 12242.6), may be parties to the agreement of merger. The agreement of merger shall state all of the following:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each party and the identity of the surviving party.

(3) The amendments, if any, subject to Sections 12500 and 12507, to the articles of the surviving corporation, if applicable, to be effected by the merger. The name of the surviving corporation may be, subject to subdivisions (b) and (c) of Section 12302, the same as, or similar to, the name of a disappearing party to the merger.

(4) The manner, if any, of converting the memberships or securities of each of the constituent corporations into shares, memberships, interests, or other securities of the surviving party and, if any memberships or securities of any of the constituent corporations are not to be converted solely into shares, memberships, interests, or other securities of the surviving party, the cash, rights, securities, or other property which the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, rights, securities, or other property may be in addition to or in lieu of shares, memberships, interests, or other securities of the surviving party.

(5) Any other details or provisions required by the laws under which any party to the merger is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 *or* 15911.12, or, if a domestic general partnership is a party to the merger, subdivision (a) of Section 16911, or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17551.

(6) Any other details or provisions as are desired.

1 (c) Each membership of the same class of any constituent
2 corporation (other than the cancellation of memberships held by
3 a party to the merger or its parent or a wholly owned subsidiary
4 of either in another constituent corporation) shall be treated
5 equally with respect to any distribution of cash, property, rights,
6 or securities unless (i) all members of the class consent or (ii) the
7 commissioner has approved the terms and conditions of the
8 transaction and the fairness of those terms pursuant to Section
9 25142.

10 (d) Notwithstanding its prior approval, an agreement of
11 merger may be amended prior to the filing of the agreement of
12 merger if the amendment is approved by each constituent
13 corporation in the same manner as the original agreement of
14 merger. If the agreement of merger as so amended and approved
15 is also approved by each of the other parties to the agreement of
16 merger, as so amended it shall then constitute the agreement of
17 merger.

18 (e) The board of a constituent corporation may, in its
19 discretion, abandon a merger, subject to the contractual rights, if
20 any, of third parties, including other parties to the agreement of
21 merger, without further approval by the members (Section
22 12224), at any time before the merger is effective.

23 (f) Each constituent corporation shall sign the agreement of
24 merger by its chairperson of the board, president, or a vice
25 president and also by its secretary or an assistant secretary acting
26 on behalf of their respective corporations.

27 (g) After required approvals of the merger by each constituent
28 corporation and each other party to the merger, the surviving
29 party shall file a copy of the agreement of merger with an
30 officers' certificate of each constituent domestic and foreign
31 corporation attached stating the total number of outstanding
32 shares or membership interests of each class entitled to vote on
33 the merger (and identifying any other person or persons whose
34 approval is required), that the agreement of merger in the form
35 attached or its principal terms, as required, were approved by that
36 corporation by a vote of a number of shares or membership
37 interests of each class which equaled or exceeded the vote
38 required, specifying each class entitled to vote and the percentage
39 vote required of each class, and, if applicable, by that other
40 person or persons whose approval is required.

1 If equity securities of a parent party (Section 12242.6) are to be
2 issued in the merger, the officers' certificate or certificate of
3 merger of the controlled party shall state either that no vote of the
4 shareholders of the parent party was required or that the required
5 vote was obtained. The merger and any amendment of the
6 articles of the surviving corporation, if applicable, contained in
7 the agreement of merger shall be effective upon the filing of the
8 agreement of merger, subject to the provisions of subdivision (i).
9 ~~The agreement of merger shall not be filed, however, until there~~
10 ~~has been filed by or on behalf of each party to the merger taxed~~
11 ~~under the Bank and Corporation Tax Law, the existence of which~~
12 ~~is terminated by the merger, the certificate of satisfaction of the~~
13 ~~Franchise Tax Board that all taxes imposed by that law have been~~
14 ~~paid or secured.~~ If a domestic reciprocal insurer organized after
15 1974 to provide medical malpractice insurance is a party to the
16 merger, the agreement of merger or certificate of merger shall not
17 be filed until there has been filed the certificate issued by the
18 Insurance Commissioner approving the merger pursuant to
19 Section 1555 of the Insurance Code.

20 In lieu of an officers' certificate, a certificate of merger, on a
21 form prescribed by the Secretary of State, shall be filed for each
22 constituent other business entity. The certificate of merger shall
23 be executed and acknowledged by each domestic constituent
24 limited liability company by all of the managers of the limited
25 liability company (unless a lesser number is specified in its
26 articles of organization or operating agreement) and by each
27 domestic constituent limited partnership by all general partners
28 (unless a lesser number is provided in its certificate of limited
29 partnership or partnership agreement) and by each domestic
30 constituent general partnership by two partners (unless a lesser
31 number is provided in its partnership agreement) and by each
32 foreign constituent general partnership or foreign constituent
33 limited liability company by one or more managers and by each
34 foreign constituent limited partnership by one or more general
35 partners, and by each constituent reciprocal insurer by the
36 chairperson of the board, president, or vice president, and by the
37 secretary or assistant secretary, or, if a constituent reciprocal
38 insurer has not appointed such officers, by the chairperson of the
39 board, president, or vice president, and by the secretary or
40 assistant secretary of the constituent reciprocal insurer's

1 attorney-in-fact, and by each other party to the merger by those
2 persons required or authorized to execute the certificate of
3 merger by the laws under which that party is organized,
4 specifying for such party the provision of law or other basis for
5 the authority of the signing persons.

6 The certificate of merger shall set forth, if a vote of the
7 shareholders, members, partners, or other holders of interests of
8 the constituent other business entity was required, a statement
9 setting forth the total number of outstanding interests of each
10 class entitled to vote on the merger and that the agreement of
11 merger or its principal terms, as required, were approved by a
12 vote of the number of interests of each class which equaled or
13 exceeded the vote required, specifying each class entitled to vote
14 and the percentage vote required of each class, and any other
15 information required to be set forth under the laws under which
16 the constituent other business entity is organized, including, if a
17 domestic limited partnership is a party to the merger, subdivision
18 (a) of Section 15678.4 *or* 15911.14, if a domestic general
19 partnership is a party to the merger, subdivision (b) of Section
20 16915, and, if a domestic limited liability company is a party to
21 the merger, subdivision (a) of Section 17552. The certificate of
22 merger for each constituent foreign other business entity, if any,
23 shall also set forth the statutory or other basis under which that
24 foreign other business entity is authorized by the laws under
25 which it is organized to effect the merger.

26 The Secretary of State may certify a copy of the agreement of
27 merger separate from the officers' certificates and certificates of
28 merger attached thereto.

29 (h) ~~a~~A copy of an agreement of merger certified on or after
30 the effective date by an official having custody thereof has the
31 same force in evidence as the original and, except as against the
32 state, is conclusive evidence of the performance of all conditions
33 precedent to the merger, the existence on the effective date of the
34 surviving party to the merger, the performance of the conditions
35 necessary to the adoption of any amendment to the articles, if
36 applicable, contained in the agreement of merger, and of the
37 merger of the constituent corporations, either by themselves or
38 together with other constituent parties, into the surviving party to
39 the merger.

1 (i) (1) The merger of domestic corporations with foreign
2 corporations or foreign other business entities in a merger in
3 which one or more other business entities is a party shall comply
4 with subdivisions (a) and (g) and this subdivision.

5 (2) Subject to subdivision (c) of Section 12214 and paragraph
6 (3), the merger shall be effective as to each domestic constituent
7 corporation and domestic constituent other business entity upon
8 filing of the agreement of merger with attachments as provided in
9 subdivision (g).

10 (3) If the surviving party is a foreign corporation or foreign
11 other business entity, except as provided in paragraph (4), the
12 merger shall be effective as to any domestic disappearing
13 corporation as of the time of effectiveness in the foreign
14 jurisdiction upon the filing in this state of a copy of the
15 agreement of merger with an officers' certificate of the surviving
16 foreign corporation and of each constituent foreign and domestic
17 corporation and a certificate of merger of each constituent other
18 business entity attached, which officers' certificates and
19 certificates of merger shall conform to the requirements of
20 subdivision (g).

21 If one or more domestic other business entities is a
22 disappearing party in a merger pursuant to this subdivision in
23 which a foreign other business entity is the surviving entity, a
24 certificate of merger required by the laws under which each
25 domestic other business entity is organized, including
26 subdivision (a) of Section 15678.4 *or* 15911.14, subdivision (b)
27 of Section 16915 or subdivision (a) of Section 17552, if
28 applicable, shall also be filed at the same time as the filing of the
29 agreement of merger.

30 (4) If the date of the filing in this state pursuant to this
31 subdivision is more than six months after the time of the
32 effectiveness in the foreign jurisdiction, or if the powers of a
33 domestic disappearing corporation are suspended at the time of
34 effectiveness in the foreign jurisdiction, the merger shall be
35 effective as to the domestic disappearing corporation as of the
36 date of filing in this state.

37 (5) Each foreign disappearing corporation that is qualified for
38 the transaction of intrastate business shall automatically by the
39 filing pursuant to subdivision (g) surrender its right to transact
40 intrastate business as of the date of filing in this state or, if later,

1 the effective date of the merger. With respect to each foreign
2 disappearing other business entity previously registered for the
3 transaction of intrastate business in this state, the filing of the
4 agreement of merger pursuant to subdivision (g) automatically
5 has the effect of a cancellation of registration for that foreign
6 other business entity without the necessity of the filing of a
7 certificate of cancellation.

8 SEC. 16. Section 12550.5 of the Corporations Code is
9 amended to read:

10 12550.5. (a) Upon merger pursuant to this chapter, a
11 surviving domestic or foreign corporation or other business entity
12 shall be deemed to have assumed the liability of each
13 disappearing domestic or foreign corporation or other business
14 entity that is taxed under Part 10 (commencing with Section
15 17001) of, or under Part 11 (commencing with Section 23001)
16 of, Division 2 of the Revenue and Taxation Code for the
17 following:

18 (1) To prepare and file, or to cause to be prepared and filed,
19 tax and information returns otherwise required of that
20 disappearing entity as specified in Chapter 2 (commencing with
21 Section 18501) of Part 10.2 of Division 2 of the Revenue and
22 Taxation Code.

23 (2) To pay any tax liability determined to be due.

24 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
25 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
26 15678.4, 15911.14, and 17552 of this code and Sections 17945,
27 17948.1, and 23334 of the Revenue and Taxation Code, if the
28 surviving entity is a domestic limited liability company, domestic
29 corporation, or registered limited liability partnership or a foreign
30 limited liability company, foreign limited liability partnership, or
31 foreign corporation that is registered or qualified to do business
32 in California, the Secretary of State shall file the merger without
33 the certificate of satisfaction of the Franchise Tax Board and
34 shall notify the Franchise Tax Board of the merger.

35 SEC. 16.5. *Section 12550.5 of the Corporations Code is*
36 *amended to read:*

37 12550.5. (a) Upon merger pursuant to this chapter, a
38 surviving domestic or foreign corporation or other business entity
39 shall be deemed to have assumed the liability of each
40 disappearing domestic or foreign corporation or other business

1 entity that is taxed under Part 10 (commencing with Section
2 17001) of, or under Part 11 (commencing with Section 23001)
3 of, Division 2 of the Revenue and Taxation Code for the
4 following:

5 (1) To prepare and file, or to cause to be prepared and filed,
6 tax and information returns otherwise required of that
7 disappearing entity as specified in Chapter 2 (commencing with
8 Section 18501) of Part 10.2 of Division 2 of the Revenue and
9 Taxation Code.

10 (2) To pay any tax liability determined to be due.

11 (b) ~~Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,~~
12 ~~6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,~~
13 ~~15678.4, and 17552 of this code and Sections 17945, 17948.1,~~
14 ~~and 23334 of the Revenue and Taxation Code, if~~ the surviving
15 entity is a domestic limited liability company, domestic
16 corporation, or registered limited liability partnership or a foreign
17 limited liability company, foreign limited liability partnership, or
18 foreign corporation that is registered or qualified to do business
19 in California, the Secretary of State shall ~~file the merger without~~
20 ~~the certificate of satisfaction of the Franchise Tax Board and~~
21 ~~shall~~ notify the Franchise Tax Board of the merger.

22 SEC. 17. Section 15534 is added to the Corporations Code, to
23 read:

24 15534. This chapter shall become inoperative and be repealed
25 on January 1, 2010, unless a later enacted statute, which becomes
26 effective on or before January 1, 2010, deletes or extends the
27 dates on which it becomes inoperative and is repealed.

28 SEC. 18. Section 15724 is added to the Corporations Code, to
29 read:

30 15724. This chapter shall become inoperative and be repealed
31 on January 1, 2010, unless a later enacted statute, which becomes
32 effective on or before January 1, 2010, deletes or extends the
33 dates on which it becomes inoperative and is repealed.

34 SEC. 19. Section 15800 of the Corporations Code is amended
35 to read:

36 15800. (a) Every partnership, other than a foreign limited
37 partnership, subject to Chapter 3 (commencing with Section
38 15611) or Chapter 5.5 (commencing with Section 15900), or a
39 commercial or banking partnership established and transacting
40 business in a place outside the United States, that is domiciled

1 without this state and has no regular place of business within this
2 state, shall, within 40 days from the time it commences to do
3 business in this state, file a statement in the office of the
4 Secretary of State in accordance with Section 16309 designating
5 some natural person or corporation as the agent of the partnership
6 upon whom process issued by authority of or under any law of
7 this state directed against the partnership may be served. A copy
8 of the designation, duly certified by the Secretary of State, is
9 sufficient evidence of the appointment.

10 (b) The process may be served in the manner provided in
11 subdivision (b) of Section 16310 on the person so designated, or,
12 in the event that no person has been designated, or if the agent
13 designated for the service of process is a natural person and
14 cannot be found with due diligence at the address stated in the
15 designation, or if the agent is a corporation and no person can be
16 found with due diligence to whom the delivery authorized by
17 subdivision (b) of Section 16310 may be made for the purpose of
18 delivery to the corporate agent, or if the agent designated is no
19 longer authorized to act, then service may be made by personal
20 delivery to the Secretary of State, Assistant Secretary of State, or
21 a Deputy Secretary of State of the process, together with a
22 written statement signed by the party to the action seeking the
23 service, or by the party's attorney, setting forth the last known
24 address of the partnership and a service fee as set forth in Section
25 12197 of the Government Code. The Secretary of State shall
26 immediately give notice of the service to the partnership by
27 forwarding the process to it by registered mail, return receipt
28 requested, at the address given in the written statement.

29 (c) Service on the person designated, or personal delivery of
30 the process and statement of address together with a service fee
31 as set forth in Section 12197 of the Government Code to the
32 Secretary of State, Assistant Secretary of State, or a Deputy
33 Secretary of State, pursuant to this section is a valid service on
34 the partnership. The partnership so served shall appear within 30
35 days after service on the person designated or within 30 days
36 after delivery of the process to the Secretary of State, Assistant
37 Secretary of State, or a Deputy Secretary of State.

38 SEC. 20. Chapter 5.5 (commencing with Section 15900) is
39 added to Title 2 of the Corporations Code, to read:

CHAPTER 5.5. UNIFORM LIMITED PARTNERSHIP ACT OF 2008

Article 1. General Provisions

15900. This chapter may be cited as the Uniform Limited Partnership Act of 2008.

15901.02. In this chapter, the following terms have the following meanings:

(a) “Acknowledged” means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: “It is hereby declared that I am the person who executed this instrument, which execution is my act and deed. Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.”

(b) “Certificate of limited partnership” means the certificate required by Section 15902.01. The term includes the certificate as amended or restated.

(c) “Contribution,” except in the phrase “right of contribution,” means any benefit provided by a person to a limited partnership in order to become a partner or in the person’s capacity as a partner.

(d) “Debtor in bankruptcy” means a person that is the subject of:

(1) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

(e) “Designated office” means:

(1) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Section 15901.14; and

(2) with respect to a foreign limited partnership, its principal office.

1 (f) “Distribution” means a transfer of money or other property
2 from a limited partnership to a partner in the partner’s capacity as
3 a partner or to a transferee on account of a transferable interest
4 owned by the transferee.

5 (g) “Domestic corporation” means a corporation formed under
6 the laws of this state.

7 (h) “Electronic transmission by the partnership” means a
8 communication that meets both of the following requirements:

9 (1) It is delivered by any of the following means:

10 (A) Facsimile transmission or electronic mail when directed to
11 the facsimile number or electronic mail address, respectively, for
12 the recipient on the record with the partnership.

13 (B) Posting on an electronic message board or other electronic
14 database, that the partnership has designated for the
15 communication, together with a separate notice to the recipient of
16 the posting, which shall be validly delivered upon the later of
17 either the posting or delivery of the separate notice thereof.

18 (C) Other means of electronic communication.

19 (2) It is to a recipient that has provided an unrevoked consent
20 to the use of the means of transmission used by the partnership in
21 the electronic transmission.

22 (i) “Electronic transmission to the partnership” means a
23 communication that meets both of the following requirements:

24 (1) It is delivered by any of the following means:

25 (A) Facsimile communication or other electronic mail when
26 directed to the facsimile number or electronic mail address,
27 respectively, that the partnership has provided from time to time
28 to the partners for sending communications to the partnership.

29 (B) Posting on an electronic message board or electronic
30 database that the partnership has designated for the
31 communication. A transmission shall have been validly delivered
32 upon the posting.

33 (C) Other means of electronic communication.

34 (2) It is a communication as to which the partnership has
35 placed in effect reasonable measures to verify that the sender is
36 the partner purporting to send the transmission, either in person
37 or by proxy.

38 (j) “Foreign limited liability limited partnership” means a
39 foreign limited partnership whose general partners have limited
40 liability for the obligations of the foreign limited partnership.

1 (k) "Foreign limited partnership" means a partnership formed
2 under the laws of a jurisdiction other than this state and required
3 by those laws to have one or more general partners and one or
4 more limited partners. The term includes a foreign limited
5 liability limited partnership.

6 (l) "Foreign other business entity" means an other business
7 entity formed under the laws of any state other than this state or
8 under the laws of a foreign country.

9 (m) "General partner" means:

10 (1) with respect to a limited partnership, a person that:

11 (A) becomes a general partner under Section 15904.01; or

12 (B) was a general partner in a limited partnership when the
13 limited partnership became subject to this chapter under
14 subdivision (a) or (b) of Section 15912.06; and

15 (2) with respect to a foreign limited partnership, a person that
16 has rights, powers, and obligations similar to those of a general
17 partner in a limited partnership.

18 (n) "Interests of all partners" means the aggregate interests of
19 all partners in the current profits derived from business
20 operations of the partnership.

21 (o) "Interests of limited partners" means the aggregate
22 interests of all limited partners in their respective capacities as
23 limited partners in the current profits derived from business
24 operations of the partnership.

25 (p) "Limited partner" means:

26 (1) with respect to a limited partnership, a person that:

27 (A) becomes a limited partner under Section 15903.01 or
28 subdivision (g) of 15907.02; or

29 (B) was a limited partner in a limited partnership when the
30 limited partnership became subject to this chapter under
31 subdivision (a) or (b) of Section 15912.06; and

32 (2) with respect to a foreign limited partnership, a person that
33 has rights, powers, and obligations similar to those of a limited
34 partner in a limited partnership.

35 (q) "Limited partnership or domestic limited partnership,"
36 except in the phrases "foreign limited partnership" and "foreign
37 limited liability limited partnership," means an entity, having one
38 or more general partners and one or more limited partners, which
39 is formed under this chapter by two or more persons or becomes

1 subject to this chapter under Article 11 (commencing with
2 Section 15911.01) or subdivisions (a) or (b) of Section 15912.06.

3 (r) “Mail” means first-class mail, postage prepaid, unless
4 registered mail is specified. Registered mail includes certified
5 mail.

6 (s) “Majority in interest of all partners” means more than 50
7 percent of the interests of all partners.

8 (t) “Majority in interest of the limited partners” means more
9 than 50 percent of the interests of limited partners.

10 (u) “Other business entity” means a corporation, general
11 partnership, limited liability company, business trust, real estate
12 investment trust, or an unincorporated association other than a
13 nonprofit association, but excludes a limited partnership.

14 (v) “Parent” of a limited partnership means any of the
15 following:

16 (1) A general partner of the limited partnership.

17 (2) A person possessing, directly or indirectly, the power to
18 direct or cause the direction of the management and policies of a
19 general partner of the limited partnership.

20 (3) A person owning, directly or indirectly, limited partnership
21 interests possessing more than 50 percent of the aggregate voting
22 power of the limited partnership.

23 (w) “Partner” means a limited partner or general partner.

24 (x) “Partnership agreement” means the partners’ agreement,
25 whether oral, implied, in a record, or in any combination,
26 concerning the limited partnership. The term includes the
27 agreement as amended.

28 (y) “Person” means an individual, partnership, limited
29 partnership, trust, estate, association, corporation, limited liability
30 company, or other entity, whether domestic or foreign.

31 (z) “Person dissociated as a general partner” means a person
32 dissociated as a general partner of a limited partnership.

33 (aa) “Principal office” means the office where the principal
34 executive office of a limited partnership or foreign limited
35 partnership is located, whether or not the office is located in this
36 state.

37 (ab) “Proxy” means a written authorization signed by a partner
38 or the partner’s attorney in fact giving another person the power
39 to vote with respect to the interest of that partner. “Signed,” for
40 the purpose of this subdivision, means the placing of the

1 partner's name on the proxy, whether by manual signature,
2 typewriting, telegraphic transmission, or otherwise, by the
3 partner or the partner's attorney in fact.

4 (ac) "Record" means information that is inscribed on a
5 tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form.

7 (ad) "Required information" means the information that a
8 limited partnership is required to maintain under Section
9 15901.11.

10 (ae) "Return of capital" means any distribution to a partner to
11 the extent that the aggregate distributions to that partner do not
12 exceed that partner's contributions to the partnership.

13 (af) "Sign" means:

14 (1) to execute or adopt a tangible symbol with the present
15 intent to authenticate a record; or

16 (2) to attach or logically associate an electronic symbol,
17 sound, or process to or with a record with the present intent to
18 authenticate the record.

19 (ag) "State" means a state of the United States, the District of
20 Columbia, Puerto Rico, the United States Virgin Islands, or any
21 territory or insular possession subject to the jurisdiction of the
22 United States.

23 (ah) "Time a notice is given or sent," unless otherwise
24 expressly provided, means any of the following:

25 (1) The time a written notice to a partner or the limited
26 partnership is deposited in the United States mail.

27 (2) The time any other written notice is personally delivered to
28 the recipient, is delivered to a common carrier for transmission,
29 or is actually transmitted by the person giving the notice by
30 electronic means to the recipient.

31 (3) The time any oral notice is communicated, in person or by
32 telephone or wireless, to the recipient or to a person at the office
33 of the recipient who the person giving the notice has reason to
34 believe will promptly communicate it to the recipient.

35 (ai) (1) "Transact intrastate business" means, for purposes of
36 registration, entering into repeated and successive transactions of
37 business in this state, other than interstate or foreign commerce.

38 (2) A foreign limited partnership shall not be considered to be
39 transacting intrastate business within the meaning of paragraph
40 (1) solely because of its status as one or more of the following:

- 1 (A) A shareholder of a foreign corporation transacting
2 intrastate business.
- 3 (B) A shareholder of a domestic corporation.
- 4 (C) A limited partner of a foreign limited partnership
5 transacting intrastate business.
- 6 (D) A limited partner of a domestic limited partnership.
- 7 (E) A member or manager of a foreign limited liability
8 company transacting intrastate business.
- 9 (F) A member or manager of a domestic limited liability
10 company.
- 11 (3) Without excluding other activities that may not constitute
12 transacting intrastate business, a foreign limited partnership shall
13 not be considered to be transacting intrastate business within the
14 meaning of paragraph (1) solely by reason of carrying on in this
15 state one or more of the following activities:
- 16 (A) Maintaining or defending any action or suit or any
17 administrative or arbitration proceeding, or effecting the
18 settlement thereof or the settlement of claims and disputes.
- 19 (B) Holding meetings of its partners or carrying on other
20 activities concerning its internal affairs.
- 21 (C) Maintaining bank accounts.
- 22 (D) Maintaining offices or agencies for the transfer, exchange,
23 and registration of its securities or depositories with relation to its
24 securities.
- 25 (E) Effecting sales through independent contractors.
- 26 (F) Soliciting or procuring orders, whether by mail or through
27 employees or agents or otherwise, where the orders require
28 acceptance without this state before becoming binding contracts.
- 29 (G) Creating or acquiring evidences of debt or mortgages,
30 liens, or security interests on real or personal property.
- 31 (H) Securing or collecting debts or enforcing mortgages and
32 security interests in property securing the debts.
- 33 (I) Conducting an isolated transaction completed within a
34 period of 180 days and not in the course of a number of repeated
35 transactions of like nature.
- 36 (J) Transacting business in interstate commerce.
- 37 (4) A person shall not be deemed to be transacting intrastate
38 business in this state within the meaning of paragraph (1) solely
39 because of the person's status as a limited partner of a domestic

1 limited partnership or a foreign limited partnership registered to
2 transact intrastate business in this state.

3 This definition shall not apply in determining the contacts or
4 activities that may subject a foreign limited partnership to service
5 of process, taxation, jurisdiction, or other regulation under any
6 other law of this state.

7 (aj) "Transfer" includes an assignment, conveyance, deed, bill
8 of sale, lease, mortgage, creation of a security interest or
9 encumbrance, gift, and transfer by operation of law.

10 (ak) "Transferable interest" means a partner's right to receive
11 distributions.

12 (al) "Transferee" means a person to which all or part of a
13 transferable interest has been transferred, whether or not the
14 transferor is a partner.

15 15901.03. (a) A person knows a fact if the person has actual
16 knowledge of it.

17 (b) A person has notice of a fact if the person:

18 (1) knows of it;

19 (2) has received a notification of it;

20 (3) has reason to know it exists from all of the facts known to
21 the person at the time in question; or

22 (4) has notice of it under subdivision (c) or (d).

23 (c) A certificate of limited partnership on file in the office of
24 the Secretary of State is notice that the partnership is a limited
25 partnership and the persons designated in the certificate as
26 general partners are general partners. Except as otherwise
27 provided in subdivision (d), the certificate is not notice of any
28 other fact.

29 (d) A person has notice of:

30 (1) another person's dissociation as a general partner, 90 days
31 after the effective date of an amendment to the certificate of
32 limited partnership which states that the other person has
33 dissociated or 90 days after the effective date of a certificate of
34 dissociation pertaining to the other person, whichever occurs
35 first;

36 (2) a limited partnership's dissolution, 90 days after the
37 effective date of an amendment to the certificate of limited
38 partnership stating that the limited partnership is dissolved;

39 (3) a limited partnership's termination, 90 days after the
40 effective date of a certificate of cancellation;

1 (4) a limited partnership's conversion under Article 11
2 (commencing with Section 15911.01), 90 days after the effective
3 date of the certificate of conversion; or

4 (5) a merger under Article 11 (commencing with Section
5 15911.01), 90 days after the effective date of the certificate of
6 merger.

7 (e) A person notifies or gives a notification to another person
8 by taking steps reasonably required to inform the other person in
9 ordinary course, whether or not the other person learns of it.

10 (f) A person receives a notification when the notification:

11 (1) comes to the person's attention; or

12 (2) is delivered at the person's place of business or at any
13 other place held out by the person as a place for receiving
14 communications.

15 (g) Except as otherwise provided in subdivision (h), a person
16 other than an individual knows, has notice, or receives a
17 notification of a fact for purposes of a particular transaction when
18 the individual conducting the transaction for the person knows,
19 has notice, or receives a notification of the fact, or in any event
20 when the fact would have been brought to the individual's
21 attention if the person had exercised reasonable diligence. A
22 person other than an individual exercises reasonable diligence if
23 it maintains reasonable routines for communicating significant
24 information to the individual conducting the transaction for the
25 person and there is reasonable compliance with the routines.
26 Reasonable diligence does not require an individual acting for the
27 person to communicate information unless the communication is
28 part of the individual's regular duties or the individual has reason
29 to know of the transaction and that the transaction would be
30 materially affected by the information.

31 (h) A general partner's knowledge, notice, or receipt of a
32 notification of a fact relating to the limited partnership is
33 effective immediately as knowledge of, notice to, or receipt of a
34 notification by the limited partnership, except in the case of a
35 fraud on the limited partnership committed by or with the
36 consent of the general partner. A limited partner's knowledge,
37 notice, or receipt of a notification of a fact relating to the limited
38 partnership is not effective as knowledge of, notice to, or receipt
39 of a notification by the limited partnership.

1 15901.04. (a) A limited partnership is an entity distinct from
2 its partners.

3 (b) A limited partnership may be organized under this chapter
4 for any lawful purpose. A limited partnership may engage in any
5 lawful business activity, whether or not for profit, except the
6 banking business, the business of issuing policies of insurance
7 and assuming insurance risks, or the trust company business.

8 (c) A limited partnership has a perpetual duration.

9 15901.05. A limited partnership has the powers to do all
10 things necessary or convenient to carry on its activities, including
11 the power to sue, be sued, and defend in its own name and to
12 maintain an action against a partner for harm caused to the
13 limited partnership by a breach of the partnership agreement or
14 violation of a duty to the partnership.

15 15901.06. The law of this state governs relations among the
16 partners of a limited partnership and between the partners and the
17 limited partnership and the liability of partners as partners for an
18 obligation of the limited partnership.

19 15901.07. (a) Unless displaced by particular provisions of
20 this chapter, the principles of law and equity supplement this
21 chapter.

22 (b) If an obligation to pay interest arises under this chapter and
23 the rate is not specified, the rate is that specified in Section 3289
24 of the Civil Code.

25 15901.08. (a) The name of a limited partnership may contain
26 the name of any partner.

27 (b) The name of a limited partnership must contain the phrase
28 "limited partnership" or the abbreviation "L.P." or "LP" at the
29 end of its name.

30 (c) The name of a foreign limited liability limited partnership
31 that is applying for a certificate of registration pursuant to
32 Section 15909.02 must contain the phrase "limited liability
33 limited partnership" or the abbreviation "LLLP" or "L.L.L.P."
34 and must not contain the abbreviation "L.P." or "LP."

35 (d) Unless authorized by subdivision (e), the name of a limited
36 partnership must be distinguishable in the records of the
37 Secretary of State from:

38 (1) the name of any limited partnership that has previously
39 filed a certificate pursuant to Section 15902.01 or any foreign
40 limited partnership registered pursuant to Section 15909.01; and

1 (2) each name reserved under Section 15901.09.

2 (e) A limited partnership may apply to the Secretary of State
3 for authorization to use a name that does not comply with
4 subdivision (d). The Secretary of State shall authorize use of the
5 name applied for if, as to each conflicting name:

6 (1) the present user, registrant, or owner of the conflicting
7 name consents in a signed record to the use and submits an
8 undertaking in a form satisfactory to the Secretary of State to
9 change the conflicting name to a name that complies with
10 subdivision (d) and is distinguishable in the records of the
11 Secretary of State from the name applied for;

12 (2) the applicant delivers to the Secretary of State a certified
13 copy of the final judgment of a court of competent jurisdiction
14 establishing the applicant's right to use in this state the name
15 applied for; or

16 (3) the applicant delivers to the Secretary of State proof
17 satisfactory to the Secretary of State that the present user,
18 registrant, or owner of the conflicting name:

19 (A) has merged into the applicant;

20 (B) has been converted into the applicant; or

21 (C) has transferred substantially all of its assets, including the
22 conflicting name, to the applicant.

23 (f) Subject to Section 15909.05, this section applies to any
24 foreign limited partnership transacting business in this state,
25 having a certificate of registration to transact business in this
26 state, or applying for a certificate of registration.

27 (g) The name of a limited partnership may not contain the
28 words "bank," "insurance," "trust," "trustee," "incorporated,"
29 "inc.," "corporation" or "corp."

30 15901.09. (a) The exclusive right to the use of a name that
31 complies with Section 15901.08 may be reserved by:

32 (1) a person intending to organize a limited partnership under
33 this chapter and to adopt the name;

34 (2) a limited partnership or a foreign limited partnership
35 authorized to transact business in this state intending to adopt the
36 name;

37 (3) a foreign limited partnership intending to obtain a
38 certificate of registration to transact business in this state and
39 adopt the name;

1 (4) a person intending to organize a foreign limited partnership
2 and intending to have it obtain a certificate of registration to
3 transact business in this state and adopt the name;

4 (5) a foreign limited partnership formed under the name; or

5 (6) a foreign limited partnership formed under a name that
6 does not comply with subdivision (b) or (c) of Section 15901.08,
7 but the name reserved under this paragraph may differ from the
8 foreign limited partnership's name only to the extent necessary to
9 comply with subdivision (b) or (c) of Section 15901.08.

10 (b) A person may apply to reserve a name under subdivision
11 (a) by delivering to the Secretary of State an application that
12 states the name to be reserved and the paragraph of subdivision
13 (a) which applies. If the Secretary of State finds that the name is
14 available for use by the applicant, the Secretary of State shall
15 issue a certificate of name reservation and thereby reserve the
16 name for the exclusive use of the applicant for 60 days.

17 (c) An applicant that has reserved a name pursuant to
18 subdivision (b) may reserve the same name for an additional
19 60-day period. The Secretary of State shall not issue a certificate
20 reserving the same name for two or more consecutive 60-day
21 periods to the same applicant or for the use or benefit of the same
22 person.

23 (d) A person that has reserved a name under this section may
24 transfer the reserved name to another person, effective upon
25 delivery to the Secretary of State of a notice of transfer that states
26 the reserved name, the name and address of the person to which
27 the reservation is to be transferred, and the paragraph of
28 subdivision (a) which applies to the other person.

29 15901.10. (a) Except as otherwise provided in subdivision
30 (b), the partnership agreement governs relations among the
31 partners and between the partners and the partnership. To the
32 extent the partnership agreement does not otherwise provide, this
33 chapter governs relations among the partners and between the
34 partners and the partnership.

35 (b) A partnership agreement may not:

36 (1) vary a limited partnership's power under Section 15901.05
37 to sue, be sued, and defend in its own name;

38 (2) vary the law applicable to a limited partnership under
39 Section 15901.06;

40 (3) vary the requirements of Section 15902.04;

(4) vary the information required under Section 15901.11 or unreasonably restrict the right to information under Section 15903.04 or 15904.07, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(5) eliminate the duty of loyalty under Section 15904.08, but the partnership agreement may:

(A) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(B) specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(6) unreasonably reduce the duty of care under subdivision (c) of Section 15904.08;

(7) eliminate the obligation of good faith and fair dealing under subdivision (b) of Section 15903.05 and subdivision (d) of Section 15904.08, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(8) vary the power of a person to dissociate as a general partner under subdivision (a) of Section 15906.04 except to require that the notice under subdivision (a) of Section 15906.03 be in a record;

(9) eliminate the power of a court to decree dissolution in the circumstances specified in subdivision (a) of Section 15908.02;

(10) vary the requirement to wind up the partnership's business as specified in Section 15908.03;

(11) unreasonably restrict the right to maintain an action under Article 10 (commencing with Section 15910.01);

(12) restrict the right of a partner to approve a conversion or merger;

(13) vary the provisions of Article 11.5 (commencing with Section 15911.14), except to the extent expressly permitted by such provisions; or

(14) restrict rights under this chapter of a person other than a partner or a transferee.

1 15901.11. A limited partnership shall maintain at its
2 designated office the following information:

3 (1) a current list showing the full name and last known street
4 and mailing address of each partner, separately identifying the
5 general partners, in alphabetical order, and the limited partners,
6 in alphabetical order;

7 (2) a copy of the initial certificate of limited partnership and
8 all amendments to and restatements of the certificate, together
9 with signed copies of any powers of attorney under which any
10 certificate, amendment, or restatement has been signed;

11 (3) a copy of any filed certificate of conversion or merger;

12 (4) a copy of the limited partnership's federal, state, and local
13 income tax returns and reports, if any, for the six most recent
14 years;

15 (5) a copy of any partnership agreement made in a record and
16 any amendment made in a record to any partnership agreement;

17 (6) a copy of any financial statement of the limited partnership
18 for the six most recent years;

19 (7) a copy of any record made by the limited partnership
20 during the past three years of any consent given by or vote taken
21 of any partner pursuant to this chapter or the partnership
22 agreement; and

23 (8) unless contained in a partnership agreement made in a
24 record, a record stating:

25 (A) the amount of cash, and a description and statement of the
26 agreed value of the other benefits, contributed and agreed to be
27 contributed by each partner;

28 (B) (1) the times at which, or events on the happening of
29 which, any additional contributions agreed to be made by each
30 partner are to be made;

31 (C) for any person that is both a general partner and a limited
32 partner, a specification of what transferable interest the person
33 owns in each capacity; and

34 (D) any events upon the happening of which the limited
35 partnership is to be dissolved and its activities wound up.

36 15901.12. A partner may lend money to and transact other
37 business with the limited partnership and has the same rights and
38 obligations with respect to the loan or other transaction as a
39 person that is not a partner.

1 15901.13. A person may be both a general partner and a
2 limited partner. A person that is both a general and limited
3 partner has the rights, powers, duties, and obligations provided
4 by this chapter and the partnership agreement in each of those
5 capacities. When the person acts as a general partner, the person
6 is subject to the obligations, duties and restrictions under this
7 chapter and the partnership agreement for general partners. When
8 the person acts as a limited partner, the person is subject to the
9 obligations, duties and restrictions under this chapter and the
10 partnership agreement for limited partners.

11 15901.14. (a) A limited partnership shall designate and
12 continuously maintain in this state:

13 (1) an office, which need not be a place of its activity in this
14 state; and

15 (2) an agent for service of process.

16 (b) A foreign limited partnership shall designate and
17 continuously maintain in this state an agent for service of
18 process.

19 (c) An agent for service of process of a limited partnership or
20 foreign limited partnership must be an individual who is a
21 resident of this state or a corporation that has complied with
22 Section 1505 of the Corporations Code and whose capacity to act
23 as an agent has not terminated.

24 15901.15. Action requiring the consent of partners under this
25 chapter may be taken without a meeting, and a partner may
26 appoint a proxy to consent or otherwise act for the partner by
27 signing an appointment record, either personally or by the
28 partner's attorney in fact.

29 15901.16. (a) In addition to Chapter 4 (commencing with
30 Section 413.10) of Title 5 of Part 2 of the Code of Civil
31 Procedure, process may be served upon limited partnerships and
32 foreign limited partnerships as provided in this section.

33 (b) Personal service of a copy of any process against the
34 limited partnership or the foreign limited partnership will
35 constitute valid service on the limited partnership if delivered
36 either (1) to any individual designated by it as agent or, if a
37 limited partnership, to any general partner or (2) if the designated
38 agent or, if a limited partnership, general partner is a corporation,
39 to any person named in the latest certificate of the corporate
40 agent filed pursuant to Section 1505 of the Corporations Code at

1 the office of the corporate agent or to any officer of the general
2 partner, shall constitute valid service on the limited partnership
3 or the foreign limited partnership. No change in the address of
4 the agent for service of process where the agent is an individual
5 or appointment of a new agent for service of process shall be
6 effective (1) for a limited partnership until an amendment to the
7 certificate of limited partnership is filed or (2) for a foreign
8 limited partnership until an amendment to the application for
9 registration is filed. In the case of a foreign limited partnership
10 that has appointed the Secretary of State as agent for service of
11 process by reason of subdivision (e) of Section 15909.07, process
12 shall be delivered by hand to the Secretary of State, or to any
13 person employed in the capacity of assistant or deputy, which
14 shall be one copy of the process for each defendant to be served,
15 together with a copy of the court order authorizing the service
16 and the fee therefor. The order shall include and set forth an
17 address to which such process shall be sent by the Secretary of
18 State.

19 (c) (1) If an agent for service of process has resigned and has
20 not been replaced or if the agent designated cannot with
21 reasonable diligence be found at the address designated for
22 personal delivery of the process, and it is shown by affidavit to
23 the satisfaction of the court that process against a limited
24 partnership or foreign limited partnership cannot be served with
25 reasonable diligence upon the designated agent or, if a foreign
26 limited partnership, upon any general partner by hand in the
27 manner provided in Section 415.10, subdivision (a) of Section
28 415.20 or subdivision (a) of Section 415.30, of the Code of Civil
29 Procedure, the court may make an order that the service shall be
30 made upon a domestic limited partnership which has filed a
31 certificate or upon a foreign limited partnership which has a
32 certificate of registration to transact business in this state by
33 delivering by hand to the Secretary of State, or to any person
34 employed in the Secretary of State's office in the capacity of
35 assistant or deputy, one copy of the process for each defendant to
36 be served, together with a copy of the order authorizing the
37 service. Service in this manner shall be deemed complete on the
38 10th day after delivery of the process to the Secretary of State.

39 (2) Upon receipt of any such copy of process and the fee
40 therefor, the Secretary of State shall give notice of the service of

1 the process to the limited partnership or foreign limited
2 partnership, at its principal office, by forwarding to that office,
3 by registered mail with request for return receipt, the copy of the
4 process.

5 (3) The Secretary of State shall keep a record of all process
6 served upon the Secretary of State under this chapter and shall
7 record therein the time of service and the Secretary of State's
8 action with reference thereto. A certificate under the Secretary of
9 State's official seal, certifying to the receipt of process, the
10 giving of notice thereof to the limited partnership or foreign
11 limited partnership, and the forwarding of the process pursuant to
12 this section, shall be competent and prima facie evidence of the
13 matters stated therein.

14 (d) (1) The certificate of a limited partnership and the
15 application for a certificate of registration of a foreign limited
16 partnership shall designate, as the agent for service of process, an
17 individual residing in this state or a corporation which has
18 complied with Section 1505 of the Corporations Code and whose
19 capacity to act as an agent has not terminated. If an individual is
20 designated, the statement shall set forth that person's complete
21 business or residence address in this state. If a corporate agent is
22 designated, no address for it shall be set forth.

23 (2) An agent designated for service of process may file with
24 the Secretary of State a signed and acknowledged written
25 statement of resignation as an agent. Thereupon the authority of
26 the agent to act in that capacity shall cease and the Secretary of
27 State forthwith shall give written notice of the filing of the
28 certificate of resignation by mail to the limited partnership or
29 foreign limited partnership addressed to its designated office.

30 (3) If an individual who has been designated agent for service
31 of process dies or resigns or no longer resides in the state or if the
32 corporate agent for that purpose, resigns, dissolves, withdraws
33 from the state, forfeits its right to transact intrastate business, has
34 its corporate rights, powers and privileges suspended or ceases to
35 exist, (A) the limited partnership shall promptly file an
36 amendment to the certificate designating a new agent or (B) the
37 foreign limited partnership shall promptly file an amendment to
38 the application for registration.

39 (e) In addition to any other discovery rights which may exist,
40 in any case pending in a California court having jurisdiction in

1 which a party seeks records from a partnership formed under this
2 chapter, whether or not the partnership is a party, the court shall
3 have the power to order the production in California of the books
4 and records of the partnership on the terms and conditions that
5 the court deems appropriate.

6 15901.17. (a) A partner may, in a written partnership
7 agreement or other writing, consent to be subject to the
8 nonexclusive jurisdiction of the courts of a specified jurisdiction,
9 or the exclusive jurisdiction of the courts of this state.

10 (b) If a partner desires to use the arbitration process, that
11 partner may in a written partnership agreement or other writing,
12 consent to be nonexclusively subject to arbitration in a specified
13 state, or to be exclusively subject to arbitration in this state.

14 (c) Along with this consent to the jurisdiction of courts or
15 arbitration, a partner may consent to be served with legal process
16 in the manner prescribed in the partnership agreement or other
17 writing.

18
19 Article 2. Formation; Certificate of Limited Partnership and
20 Other Filings
21

22 15902.01. (a) In order for a limited partnership to be formed,
23 a certificate of limited partnership must be filed with and on a
24 form prescribed by the Secretary of State and, either before or
25 after the filing of a certificate of limited partnership, the partners
26 shall have entered into a partnership agreement. The certificate
27 must state:

28 (1) the name of the limited partnership, which must comply
29 with Section 15901.08;

30 (2) the address of the initial designated office; and

31 (3) the name and address of the initial agent for service of
32 process in accordance with paragraph (1) of subdivision ~~(a)~~ (d) of
33 Section 15901.16.

34 (4) the name and the address of each general partner.

35 (b) A certificate of limited partnership may also contain any
36 other matters but may not vary or otherwise affect the provisions
37 specified in subdivision (b) of Section 15901.10 in a manner
38 inconsistent with that section.

1 (c) Subject to subdivision (c) of Section 15902.06 a limited
2 partnership is formed when the Secretary of State files the
3 certificate of limited partnership.

4 (d) Subject to subdivision (b), if any provision of a partnership
5 agreement is inconsistent with the filed certificate of limited
6 partnership or with a filed certificate of dissociation,
7 cancellation, or amendment or filed certificate of conversion or
8 merger:

9 (1) the partnership agreement prevails as to partners and
10 transferees; and

11 (2) the filed certificate of limited partnership, certificate of
12 dissociation, cancellation, or amendment or filed certificate of
13 conversion or merger prevails as to persons, other than partners
14 and transferees, that reasonably rely on the filed record to their
15 detriment.

16 (e) A limited partnership may record in the office of the
17 county recorder of any county in this state a certified copy of the
18 certificate of limited partnership, or any amendment thereto,
19 which has been filed by the Secretary of State. A foreign limited
20 partnership may record in the office of the county recorder of any
21 county in the state a certified copy of the application for
22 registration to transact business, together with the certificate of
23 registration, referred to in Section 15909.02, or any amendment
24 thereto, which has been filed by the Secretary of State. The
25 recording shall create a conclusive presumption in favor of any
26 bona fide purchaser or encumbrancer for value of the partnership
27 real property located in the county in which the certified copy has
28 been recorded, that the persons named as general partners therein
29 are the general partners of the partnership named and that they
30 are all of the general partners of the partnership.

31 (f) The Secretary of State may cancel the filing of certificates
32 of limited partnership if a check or other remittance accepted in
33 payment of the filing fee is not paid upon presentation. For
34 partners and transferees, the partnership agreement is paramount.
35 Upon receiving written notification that the item presented for
36 payment has not been honored for payment, the Secretary of
37 State shall give a first written notice of the applicability of this
38 section to the agent for service of process or to the person
39 submitting the instrument. Thereafter, if the amount has not been
40 paid by cashier's check or equivalent, the Secretary of State shall

1 give a second written notice of cancellation and the cancellation
2 shall thereupon be effective. The second notice shall be given 20
3 days or more after the first notice and 90 days or less after the
4 original filing.

5 (g) The Secretary of State shall include with instructional
6 materials, provided in conjunction with the form for filing a
7 certificate of limited partnership under subdivision (a), a notice
8 that the filing of the certificate of limited partnership will
9 obligate the limited partnership to pay an annual tax for that
10 taxable year to the Franchise Tax Board pursuant to Section
11 17935 of the Revenue and Taxation Code. That notice shall be
12 updated annually to specify the dollar amount of the annual tax.

13 15902.02. (a) In order to amend its certificate of limited
14 partnership, a limited partnership must deliver to and on a form
15 prescribed by the Secretary of State for filing an amendment
16 stating:

17 (1) the name and the Secretary of State's file number of the
18 limited partnership; and

19 (2) the changes the amendment makes to the certificate as
20 most recently amended or restated.

21 (b) A limited partnership shall promptly deliver to the
22 Secretary of State for filing an amendment to a certificate of
23 limited partnership to reflect:

24 (1) the admission of a new general partner;

25 (2) the dissociation of a person as a general partner; or

26 (3) the appointment of a person to wind up the limited
27 partnership's activities under subdivisions (c) or (d) of Section
28 15908.03.

29 (c) A general partner that knows that any information in a filed
30 certificate of limited partnership was false when the certificate
31 was filed or has become false due to changed circumstances shall
32 promptly:

33 (1) cause the certificate to be amended; or

34 (2) if appropriate, deliver to the Secretary of State for filing an
35 amendment or a certificate of correction pursuant to Section
36 15902.07.

37 (d) A certificate of limited partnership may be amended at any
38 time for any other proper purpose as determined by the limited
39 partnership.

(e) A restated certificate of limited partnership may be delivered to and on a form prescribed by the Secretary of State for filing in the same manner as an amendment.

(1) A restated certificate of limited partnership may be filed that embodies all of the provisions that are in effect contained in the different certificates that have been filed with the Secretary of State.

(2) A restated certificate of limited partnership may include an amendment of the certificate of limited partnership not previously filed with the Secretary of State.

(3) The restated certificate of limited partnership shall supersede the initial certificate of limited partnership and all amendments thereto previously filed with the Secretary of State.

(4) Any amendment effected in connection with the restatement of the certificate of limited partnership shall be subject to any other provision of this chapter not inconsistent with this section that would apply if a separate certificate of amendment were filed to effect that amendment.

(f) Subject to subdivision (c) of Section 15902.06, an amendment or restated certificate is effective when filed by the Secretary of State.

15902.03. A dissolved limited partnership that has completed winding up shall deliver to and on a form prescribed by the Secretary of State for filing a certificate of cancellation that states:

(1) the name of the limited partnership and the Secretary of State's file number;

(2) the date of filing of its initial certificate of limited partnership; and

(3) any other information as determined by the general partners filing the certificate or by a person appointed pursuant to subdivisions (c) or (d) of Section 15908.03.

15902.04. (a) Each record delivered to the Secretary of State for filing pursuant to this chapter must be signed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment designating as general partner a person admitted under paragraph (2) of subdivision (c) of Section

1 15908.01 following the dissociation of a limited partnership's
2 last general partner must be signed by that person.

3 (3) An amendment required by subdivision (c) of Section
4 15908.03 following the appointment of a person to wind up the
5 dissolved limited partnership's activities must be signed by that
6 person.

7 (4) Any other amendment must be signed by:

8 (A) at least one general partner listed in the certificate of
9 limited partnership;

10 (B) each other person designated in the amendment as a new
11 general partner; and

12 (C) each person that the amendment indicates has dissociated
13 as a general partner, unless:

14 (i) the person is deceased or a guardian or general conservator
15 has been appointed for the person and the amendment so states;
16 or

17 (ii) the person has previously delivered to the Secretary of
18 State for filing a certificate of dissociation.

19 (5) A restated certificate of limited partnership must be signed
20 by at least one general partner listed in the certificate, and, to the
21 extent the restated certificate effects a change under any other
22 paragraph of this subdivision, the restated certificate must be
23 signed in a manner that satisfies that paragraph.

24 (6) A certificate of cancellation must be signed by all general
25 partners listed in the certificate of limited partnership or, if the
26 certificate of limited partnership of a dissolved limited
27 partnership lists no general partners, by the person appointed
28 pursuant to subdivisions (c) or (d) of Section 15908.03 to wind
29 up the dissolved limited partnership's activities.

30 (7) Certificates of conversion must be signed as provided in
31 subdivision (b) of Section 15911.06.

32 (8) Certificates of merger must be signed as provided in
33 subdivision (a) of Section 15911.14.

34 (9) Any other record delivered on behalf of a limited
35 partnership to the Secretary of State for filing must be signed by
36 at least one general partner listed in the certificate of limited
37 partnership.

38 (10) A certificate of dissociation by a person pursuant to
39 paragraph (4) of subdivision (a) of Section 15906.05 stating that

1 the person has dissociated as a general partner must be signed by
2 that person.

3 (11) A certificate of withdrawal by a person pursuant to
4 Section 15903.06 must be signed by that person.

5 (12) A record delivered on behalf of a foreign limited
6 partnership to the Secretary of State for filing must be signed by
7 at least one general partner of the foreign limited partnership.

8 (13) Any other record delivered on behalf of any person to the
9 Secretary of State for filing must be signed by that person.

10 (b) Any person may sign by an attorney in fact any record to
11 be filed pursuant to this chapter.

12 (c) The Secretary of State shall not be required to verify that
13 the person withdrawing or dissociating was ever actually named
14 in an official filing as a general or limited partner.

15 15902.05. (a) If a person required by this chapter to sign a
16 record or deliver a record to the Secretary of State for filing does
17 not do so, any other person that is aggrieved may petition the
18 superior court to order:

19 (1) the person to sign the record;

20 (2) deliver the record to the Secretary of State for filing; or

21 (3) the Secretary of State to file the record unsigned.

22 (b) If the person aggrieved under subdivision (a) is not the
23 limited partnership or foreign limited partnership to which the
24 record pertains, the aggrieved person shall make the limited
25 partnership or foreign limited partnership a party to the action. A
26 person aggrieved under subdivision (a) may seek the remedies
27 provided in subdivision (a) in the same action in combination or
28 in the alternative. In any action under this subdivision, if the
29 court finds the failure of the person to comply with the
30 requirement to sign a record or deliver a record to the Secretary
31 of State for filing to have been without justification, the court
32 may award an amount sufficient to reimburse the persons
33 aggrieved under subdivision (a) bringing the action for the
34 reasonable expenses incurred by such persons, including
35 attorneys' fees, in connection with the action or proceeding.

36 (c) A record filed unsigned pursuant to this section is effective
37 without being signed.

38 (d) Any person, other than a general partner, delivering a
39 record to the Secretary of State for filing, shall state the statutory

1 authority for such action after the signature on the appropriate
2 record.

3 15902.06. (a) A record authorized or required to be delivered
4 to the Secretary of State for filing under this chapter must be
5 completed on a form prescribed by and in a medium permitted by
6 the Secretary of State, and be delivered to the Secretary of State.
7 Unless the Secretary of State determines that a record does not
8 comply with the filing requirements of this chapter, and if all
9 requisite fees have been paid, the Secretary of State shall file the
10 record.

11 (b) Except as otherwise provided in Sections 15901.16,
12 15902.01, and 15902.07, a record delivered to the Secretary of
13 State for filing under this chapter may specify an effective time
14 and a delayed effective date. Except as otherwise provided in this
15 chapter, a record filed by the Secretary of State is effective:

16 (1) if the record does not specify a delayed effective date, on
17 the date the record is filed as evidenced by the Secretary of
18 State's endorsement of the date on the record;

19 (2) if the record specifies a delayed effective date on the
20 earlier of:

21 (A) the specified date; or

22 (B) the 90th day after the record is filed; or

23 (c) In case a delayed effective date is specified, the record may
24 be prevented from becoming effective by a certificate stating that
25 by appropriate action it has been revoked and is null and void,
26 executed in the same manner as the original record and delivered
27 to the Secretary of State for filing before the specified effective
28 date. In the case of certificate of merger, a certificate revoking
29 the earlier filing need only be executed on behalf of one of the
30 constituent parties to the merger. If no such revocation certificate
31 is filed, the record becomes effective on the date specified.

32 (d) If the Secretary of State determines that a record delivered
33 to the Secretary of State for filing does not conform to the law
34 and returns it to the person delivering it, the record may be
35 resubmitted accompanied by a written opinion of the member of
36 the State Bar of California delivering the record or representing
37 the person delivering it, to the effect that the specific provisions
38 of the record objected to by the Secretary of State do conform to
39 law and stating the points and authorities upon which the opinion
40 is based. The Secretary of State shall rely, with respect to any

1 disputed point of law, other than the application of Sections
2 15901.08, 15901.09, 15909.02, and 15909.05, upon that written
3 opinion in determining whether the record conforms to law.
4 When filed by the Secretary of State upon resubmission, such
5 record is effective retroactively as of the date that the original
6 record was delivered to the Secretary of State for filing.

7 15902.07. (a) A limited partnership or foreign limited
8 partnership may deliver to and on a form prescribed by the
9 Secretary of State for filing a certificate of correction to correct a
10 record previously delivered by the limited partnership or foreign
11 limited partnership to the Secretary of State and filed by the
12 Secretary of State, if at the time of filing the record contained
13 false or erroneous information or was defectively signed.

14 (b) A certificate of correction may not state a delayed effective
15 date and must:

16 (1) describe the record to be corrected, including its filing date
17 and file number;

18 (2) specify the incorrect information and the reason it is
19 incorrect or the manner in which the signing was defective; and

20 (3) correct the incorrect information or defective signature.

21 (c) When filed by the Secretary of State, a certificate of
22 correction is effective retroactively as of the effective date of the
23 record the certificate corrects, but the certificate is effective when
24 filed:

25 (1) for the purposes of subdivisions (c) and (d) of Section
26 15901.03; and

27 (2) as to persons relying on the uncorrected record and
28 adversely affected by the correction.

29 15902.08. (a) If a record delivered to the Secretary of State
30 for filing under this chapter and filed by the Secretary of State
31 contains false information, a person that suffers loss by reliance
32 on the information may recover damages for the loss from:

33 (1) a person that signed the record, or caused another to sign it
34 on the person's behalf, and knew the information to be false at
35 the time the record was signed; and

36 (2) a general partner that has notice that the information was
37 false when the record was filed or has become false because of
38 changed circumstances, if the general partner has notice for a
39 reasonably sufficient time before the information is relied upon
40 to enable the general partner to effect an amendment under

1 Section 15902.02, file a petition pursuant to Section 15902.05, or
2 deliver to the Secretary of State for filing a certificate of
3 correction pursuant to Section 15902.07.

4 (b) Signing a record authorized or required to be filed under
5 this chapter constitutes an affirmation under the penalties of
6 perjury that the facts stated in the record are true.

7 15902.09. (a) A domestic limited partnership whose
8 certificate of limited partnership has been canceled pursuant to
9 Section 15902.03 may be revived by filing with, and on a form
10 prescribed by, the Secretary of State a certificate of revival. The
11 certificate of revival shall be accompanied by written
12 confirmation by the Franchise Tax Board that all of the following
13 have been paid to the Franchise Tax Board:

14 (1) The annual tax due under Section 17935 of the Revenue
15 and Taxation Code.

16 (2) All penalties and interest thereof for each year for which
17 the domestic limited partnership failed to pay such annual tax,
18 including each year between the cancellation of its certificate of
19 limited partnership and its revival.

20 (b) The certificate of revival shall set forth all of the
21 following:

22 (1) The name of the limited partnership at the time its
23 certificate of limited partnership was cancelled, and if the name
24 is not available at the time of revival, the name under which the
25 limited partnership is to be revived.

26 (2) The date of filing of the original certificate of limited
27 partnership.

28 (3) The address of the limited partnership's designated office.

29 (4) The name and address of the initial agent for service of
30 process in accordance with paragraph (1) of subdivision-~~(a)~~ (d) of
31 Section 15901.16.

32 (5) A statement that the certificate of revival is filed by one or
33 more general partners of the limited partnership authorized to
34 execute and file the certificate of revival to revive the limited
35 partnership.

36 (6) The Secretary of State's file number for the original
37 limited partnership.

38 (7) The name and address of each general partner.

39 (8) Any other matters the general partner or partners executing
40 the certificate of revival determine to include therein.

1 (c) The certificate of revival should be deemed to be an
2 amendment to the certificate of limited partnership, and the
3 limited partnership shall not be required to take any further
4 action to amend its certificate of limited partnership pursuant to
5 Section 15902.02 with respect to the matter set forth in the
6 certificate of revival.

7 (d) Upon the filing of the certificate of revival, the limited
8 partnership shall be revived with the same force and effect as if
9 the certificate of limited partnership had not been canceled
10 pursuant to Section 15902.03. The revival shall validate all
11 contracts, acts, matters, and things made, done, and performed by
12 the limited partnership, its partners, employees, and agents
13 following the time its certificate of limited partnership was
14 canceled pursuant to Section 15902.03 with the same force and
15 effect and all intents and purposes as if the certificate of limited
16 partnership had remained in full force and effect. This provision
17 shall apply provided that third parties are relying on the acts of
18 the partnership, its partners, employees, and agents. All real and
19 personal property, and all rights and interests, that belong to a
20 limited partnership at the time its certificate of limited
21 partnership was cancelled pursuant to Section 15902.03 or that
22 were acquired by the limited partnership following the
23 cancellation of the certificate of limited partnership, that were not
24 disposed of prior to the time of its revival, shall be vested in the
25 limited partnership after its revival as fully as if they were held
26 by the limited partnership at, and during the time after, as the
27 case may be, the time the certificate of limited partnership was
28 cancelled. After its revival, the limited partnership and its
29 partners shall have all of the same liability for contracts, acts,
30 matters, and things made, done, or performed in the limited
31 partnership's name and on behalf of its partners, employees, and
32 agents, as the limited partnership and its partners would have had
33 if the limited partnership's certificate of limited partnership had
34 at all times remained in full force and effect.

35
36 Article 3. Limited Partners
37

38 15903.01. A person becomes a limited partner:

39 (a) as provided in the partnership agreement;

1 (b) as the result of a conversion or merger under Article 11
2 (commencing with Section 15911.01); or

3 (c) with the consent of all the partners.

4 15903.02. A limited partner does not have the right or the
5 power as a limited partner to act for or bind the limited
6 partnership.

7 15903.03. (a) A limited partner is not liable for any
8 obligation of a limited partnership unless named as a general
9 partner in the certificate or, in addition to exercising the rights
10 and powers of a limited partner, the limited partner participates in
11 the control of the business. If a limited partner participates in the
12 control of the business without being named as a general partner,
13 that partner may be held liable as a general partner only to
14 persons who transact business with the limited partnership with
15 actual knowledge of that partner's participation in control and
16 with a reasonable belief, based upon the limited partner's
17 conduct, that the partner is a general partner at the time of the
18 transaction. Nothing in this chapter shall be construed to affect
19 the liability of a limited partner to third parties for the limited
20 partner's participation in tortious conduct.

21 (b) A limited partner does not participate in the control of the
22 business within the meaning of subdivision (a) solely by doing,
23 attempting to do, or having the right or power to do, one or more
24 of the following:

25 (1) Being any of the following:

26 (A) An independent contractor for, an agent or employee of, or
27 transacting business with, the limited partnership or a general
28 partner of the limited partnership.

29 (B) An officer, director, or shareholder of a corporate general
30 partner of the limited partnership.

31 (C) A member, manager, or officer of a limited liability
32 company that is a general partner of the limited partnership.

33 (D) A limited partner of a partnership that is a general partner
34 of the limited partnership.

35 (E) A trustee, administrator, executor, custodian, or other
36 fiduciary or beneficiary of an estate or trust that is a general
37 partner.

38 (F) A trustee, officer, advisor, shareholder, or beneficiary of a
39 business trust that is a general partner.

1 (2) Consulting with and advising a general partner with
2 respect to the business of the limited partnership.

3 (3) Acting as surety for the limited partnership or for a general
4 partner, guaranteeing one or more specific debts of the limited
5 partnership, providing collateral for the limited partnership or
6 general partner, borrowing money from the limited partnership or
7 a general partner, or lending money to the limited partnership or
8 a general partner.

9 (4) Approving or disapproving an amendment to the
10 partnership agreement.

11 (5) Voting on, proposing, or calling a meeting of the partners.

12 (6) Winding up the partnership pursuant to Section 15908.03.

13 (7) Executing and filing a certificate pursuant to Section
14 15902.05, a certificate of withdrawal pursuant to paragraph (12)
15 of subdivision (a) of Section 15902.04, or a certificate of
16 cancellation of certificate of limited partnership pursuant to
17 paragraph (7) of subdivision (a) of Section 15902.04.

18 (8) Serving on an audit committee or committee performing
19 the functions of an audit committee.

20 (9) Serving on a committee of the limited partnership or the
21 limited partners for the purpose of approving actions of the
22 general partner.

23 (10) Calling, requesting, attending, or participating at any
24 meeting of the partners or the limited partners.

25 (11) Taking any action required or permitted by law to bring,
26 pursue, settle, or terminate a derivative action on behalf of the
27 limited partnership.

28 (12) Serving on the board of directors or a committee of,
29 consulting with or advising, being or acting as an officer,
30 director, stockholder, partner, member, manager, agent, or
31 employee of, or being or acting as a fiduciary for, any person in
32 which the limited partnership has an interest.

33 (13) Exercising any right or power permitted to limited
34 partners under this chapter and not specifically enumerated in
35 this subdivision.

36 (c) The enumeration in subdivision (b) does not mean that any
37 other conduct or the possession or exercise of any other power by
38 a limited partner constitutes participation by the limited partner
39 in the control of the business of the limited partnership.

1 15903.04. (a) On 10 days' demand, made in a record
2 received by the limited partnership, a limited partner may inspect
3 and copy any information required to be maintained pursuant to
4 Section 15901.11 during regular business hours in the limited
5 partnership's designated office. The limited partner need not
6 have any particular purpose for seeking the information.

7 (b) Subject to subdivision (g), during regular business hours
8 and at a reasonable location specified by the limited partnership,
9 a limited partner may obtain from the limited partnership, which
10 may be transmitted via electronic transmission, and inspect and
11 copy true and full information regarding the state of the activities
12 and financial condition of the limited partnership and other
13 information regarding the activities of the limited partnership as
14 is just and reasonable if:

15 (1) the limited partner seeks the information for a purpose
16 reasonably related to the partner's interest as a limited partner;

17 (2) the limited partner makes a demand in a record received by
18 the limited partnership, describing with reasonable particularity
19 the information sought and the purpose for seeking the
20 information; and

21 (3) the information sought is directly connected to the limited
22 partner's purpose.

23 (c) Within 10 days after receiving a demand pursuant to
24 subdivision (b), the limited partnership in a record shall inform
25 the limited partner that made the demand:

26 (1) what information the limited partnership will provide in
27 response to the demand;

28 (2) when and where the limited partnership will provide the
29 information; and

30 (3) if the limited partnership declines to provide any
31 demanded information, the limited partnership's reasons for
32 declining.

33 (d) Subject to subdivision (f), a person dissociated as a limited
34 partner may inspect and copy required information during regular
35 business hours in the limited partnership's designated office if:

36 (1) the information pertains to the period during which the
37 person was a limited partner;

38 (2) the person seeks the information in good faith; and

39 (3) the person meets the requirements of subdivision (b).

1 (e) The limited partnership shall respond to a demand made
2 pursuant to subdivision (d) in the same manner as provided in
3 subdivision (c).

4 (f) If a limited partner dies, Section 15907.04 applies.

5 (g) The limited partnership shall have the right to keep
6 confidential from limited partners for such period of time as the
7 limited partnership deems reasonable, any information which the
8 limited partnership reasonably believes to be in the nature of
9 trade secrets or other information the disclosure of which the
10 limited partnership in good faith believes is not in the best
11 interest of the limited partnership or could damage the limited
12 partnership or its business or which the limited partnership is
13 required by law or by agreement with a third party to keep
14 confidential.

15 (h) The limited partnership may impose reasonable restrictions
16 on the use of information obtained under this section. In a dispute
17 concerning the reasonableness of a restriction under this
18 subdivision, the limited partnership has the burden of proving
19 reasonableness.

20 (i) A limited partnership may charge a person that makes a
21 demand under this section reasonable costs of copying, limited to
22 the costs of labor and material.

23 (j) Whenever this chapter or a partnership agreement provides
24 for a limited partner to give or withhold consent to a matter,
25 before the consent is given or withheld, the limited partnership
26 shall, without demand, provide the limited partner with all
27 information material to the limited partner's decision that the
28 limited partnership knows.

29 (k) A limited partner or person dissociated as a limited partner
30 may exercise the rights under this section through an attorney or
31 other agent. Any restriction imposed under subdivision (g),
32 subdivision (h) or by the partnership agreement applies both to
33 the attorney or other agent and to the limited partner or person
34 dissociated as a limited partner.

35 (l) The rights stated in this section do not extend to a person as
36 transferee, but may be exercised by the legal representative of an
37 individual under legal disability who is a limited partner or
38 person dissociated as a limited partner.

1 15903.05. (a) A limited partner does not have any fiduciary
2 duty to the limited partnership or to any other partner solely by
3 reason of being a limited partner.

4 (b) A limited partner shall discharge the duties to the
5 partnership and the other partners under this chapter or under the
6 partnership agreement and exercise any rights consistently with
7 the obligation of good faith and fair dealing.

8 (c) A limited partner does not violate a duty or obligation
9 under this chapter or under the partnership agreement merely
10 because the limited partner's conduct furthers the limited
11 partner's own interest.

12 15903.06. (a) Except as otherwise provided in subdivision
13 (b), a person that makes an investment in a business enterprise
14 and erroneously but in good faith believes that the person has
15 become a limited partner in the enterprise is not liable for the
16 enterprise's obligations by reason of making the investment,
17 receiving distributions from the enterprise, or exercising any
18 rights of or appropriate to a limited partner, if, on ascertaining the
19 mistake, the person:

20 (1) causes an appropriate certificate of limited partnership,
21 amendment, or certificate of correction to be signed and
22 delivered to the Secretary of State for filing; or

23 (2) withdraws from future participation as an owner in the
24 enterprise by signing and delivering to and on a form prescribed
25 by the Secretary of State for filing a certificate of withdrawal
26 under this section.

27 (b) A person that makes an investment described in
28 subdivision (a) is liable to the same extent as a general partner to
29 any third party that enters into a transaction with the enterprise,
30 believing in good faith that the person is a general partner, before
31 the Secretary of State files a certificate of withdrawal, certificate
32 of limited partnership, amendment, or certificate of correction to
33 show that the person is not a general partner.

34 (c) If a person makes a diligent effort in good faith to comply
35 with paragraph (1) of subdivision (a) and is unable to cause the
36 appropriate certificate of limited partnership, amendment, or
37 certificate of correction to be signed and delivered to the
38 Secretary of State for filing, the person has the right to withdraw
39 from the enterprise pursuant to paragraph (2) of subdivision (a)
40 even if the withdrawal would otherwise breach an agreement

1 with others that are or have agreed to become co-owners of the
2 enterprise.

3 15903.07. (a) The partnership agreement may provide for the
4 creation of classes of limited partners. The partnership agreement
5 shall define the rights, powers, and duties of those classes,
6 including rights, powers, and duties senior to other classes of
7 limited partners.

8 (b) The partnership agreement may provide to all or certain
9 specified classes of limited partners the right to vote separately or
10 with all or any class or the general partners on any matter.

11 12 Article 4. General Partners

13
14 15904.01. A person becomes a general partner:

15 (a) as provided in the partnership agreement:

16 (b) under paragraph (2) of subdivision (c) of Section 15908.01
17 following the dissociation of a limited partnership's last general
18 partner;

19 (c) as the result of a conversion or merger under Article 11
20 (commencing with Section 15911.01); or

21 (d) with the consent of all the partners.

22 15904.02. (a) Each general partner is an agent of the limited
23 partnership for the purposes of its activities. An act of a general
24 partner, including the signing of a record in the partnership's
25 name, for apparently carrying on in the ordinary course the
26 limited partnership's activities or activities of the kind carried on
27 by the limited partnership binds the limited partnership, unless
28 the general partner did not have authority to act for the limited
29 partnership in the particular matter and the person with which the
30 general partner was dealing knew, had received a notification, or
31 had notice under subdivision (d) of Section 15901.03 that the
32 general partner lacked authority.

33 (b) An act of a general partner which is not apparently for
34 carrying on in the ordinary course the limited partnership's
35 activities or activities of the kind carried on by the limited
36 partnership binds the limited partnership only if the act was
37 actually authorized by all the other partners.

38 15904.03. (a) A limited partnership is liable for loss or injury
39 caused to a person, or for a penalty incurred, as a result of a
40 wrongful act or omission, or other actionable conduct, of a

1 general partner acting in the ordinary course of activities of the
2 limited partnership or with authority of the limited partnership.

3 (b) If, in the course of the limited partnership's activities or
4 while acting with authority of the limited partnership, a general
5 partner receives or causes the limited partnership to receive
6 money or property of a person not a partner, and the money or
7 property is misapplied by a general partner, the limited
8 partnership is liable for the loss.

9 15904.04. (a) Except as otherwise provided in subdivision
10 (b), all general partners are liable jointly and severally for all
11 obligations of the limited partnership unless otherwise agreed by
12 the claimant or provided by law.

13 (b) A person that becomes a general partner of an existing
14 limited partnership is not personally liable for an obligation of a
15 limited partnership incurred before the person became a general
16 partner.

17 15904.05. (a) To the extent not inconsistent with Section
18 15904.04, a general partner may be joined in an action against
19 the limited partnership or named in a separate action.

20 (b) A judgment against a limited partnership is not by itself a
21 judgment against a general partner. A judgment against a limited
22 partnership may not be satisfied from a general partner's assets
23 unless there is also a judgment against the general partner.

24 (c) A judgment creditor of a general partner may not levy
25 execution against the assets of the general partner to satisfy a
26 judgment based on a claim against the limited partnership, unless
27 the partner is personally liable for the claim under Section
28 15904.04 and:

29 (1) a judgment based on the same claim has been obtained
30 against the limited partnership and a writ of execution on the
31 judgment has been returned unsatisfied in whole or in part;

32 (2) the limited partnership is a debtor in bankruptcy;

33 (3) the general partner has agreed that the creditor need not
34 exhaust limited partnership assets;

35 (4) a court grants permission to the judgment creditor to levy
36 execution against the assets of a general partner based on a
37 finding that limited partnership assets subject to execution are
38 clearly insufficient to satisfy the judgment, that exhaustion of
39 limited partnership assets is excessively burdensome, or that the

1 grant of permission is an appropriate exercise of the court's
2 equitable powers; or

3 (5) liability is imposed on the general partner by law or
4 contract independent of the existence of the limited partnership.

5 15904.06. (a) Each general partner has equal rights in the
6 management and conduct of the limited partnership's activities.
7 Except as expressly provided in this chapter, any matter relating
8 to the activities of the limited partnership may be exclusively
9 decided by the general partner or, if there is more than one
10 general partner, by a majority of the general partners.

11 (b) The consent of each partner is necessary to:

12 (1) amend the partnership agreement; and

13 (2) sell, lease, exchange, or otherwise dispose of all, or
14 substantially all, of the limited partnership's property, with or
15 without the good will, other than in the usual and regular course
16 of the limited partnership's activities.

17 (c) A limited partnership shall reimburse a general partner for
18 payments made and indemnify a general partner for liabilities
19 incurred by the general partner in the ordinary course of the
20 activities of the partnership or for the preservation of its activities
21 or property.

22 (d) A limited partnership shall reimburse a general partner for
23 an advance to the limited partnership beyond the amount of
24 capital the general partner agreed to contribute.

25 (e) A payment or advance made by a general partner which
26 gives rise to an obligation of the limited partnership under
27 subdivision (c) or (d) constitutes a loan to the limited partnership
28 which accrues interest from the date of the payment or advance.

29 (f) A general partner is not entitled to remuneration for
30 services performed for the partnership.

31 15904.07. (a) A general partner, without having any
32 particular purpose for seeking the information, may inspect and
33 copy during regular business hours:

34 (1) in the limited partnership's designated office, required
35 information; and

36 (2) at a reasonable location specified by the limited
37 partnership, any other records maintained by the limited
38 partnership regarding the limited partnership's activities and
39 financial condition.

1 (b) Each general partner and the limited partnership shall
2 furnish to a general partner which may be transmitted via
3 electronic transmission:

4 (1) without demand, any information concerning the limited
5 partnership's activities and activities reasonably required for the
6 proper exercise of the general partner's rights and duties under
7 the partnership agreement or this chapter; and

8 (2) on demand, any other information concerning the limited
9 partnership's activities, except to the extent the demand or the
10 information demanded is unreasonable or otherwise improper
11 under the circumstances.

12 (c) Subject to subdivision (e), on 10 days' demand made in a
13 record received by the limited partnership, a person dissociated
14 as a general partner may have access to the information and
15 records described in subdivision (a) at the location specified in
16 subdivision (a) if:

17 (1) the information or record pertains to the period during
18 which the person was a general partner;

19 (2) the person seeks the information or record in good faith;
20 and

21 (3) the person satisfies the requirements imposed on a limited
22 partner by subdivision (b) of Section 15903.04.

23 (d) The limited partnership shall respond to a demand made
24 pursuant to subdivision (c) in the same manner as provided in
25 subdivision (c) of Section 15903.04.

26 (e) If a general partner dies, Section 15907.04 applies.

27 (f) The limited partnership may impose reasonable restrictions
28 on the use of information under this section. In any dispute
29 concerning the reasonableness of a restriction under this
30 subdivision, the limited partnership has the burden of proving
31 reasonableness.

32 (g) A limited partnership may charge a person dissociated as a
33 general partner that makes a demand under this section
34 reasonable costs of copying, limited to the costs of labor and
35 material.

36 (h) A general partner or person dissociated as a general partner
37 may exercise the rights under this section through an attorney or
38 other agent. Any restriction imposed under subdivision (f) or by
39 the partnership agreement applies both to the attorney or other

1 agent and to the general partner or person dissociated as a general
2 partner.

3 (i) The rights under this section do not extend to a person as
4 transferee, but the rights under subdivision (c) of a person
5 dissociated as a general partner may be exercised by the legal
6 representative of an individual who dissociated as a general
7 partner under paragraph (2) or (3) of subdivision (g) of Section
8 15906.03.

9 15904.08. (a) The fiduciary duties that a general partner
10 owes to the limited partnership and the other partners are the
11 duties of loyalty and care under subdivisions (b) and (c).

12 (b) A general partner's duty of loyalty to the limited
13 partnership and the other partners is limited to the following:

14 (1) to account to the limited partnership and hold as trustee for
15 it any property, profit, or benefit derived by the general partner in
16 the conduct and winding up of the limited partnership's activities
17 or derived from a use by the general partner of limited
18 partnership property, including the appropriation of a limited
19 partnership opportunity;

20 (2) to refrain from dealing with the limited partnership in the
21 conduct or winding up of the limited partnership's activities as or
22 on behalf of a party having an interest adverse to the limited
23 partnership; and

24 (3) to refrain from competing with the limited partnership in
25 the conduct or winding up of the limited partnership's activities.

26 (c) A general partner's duty of care to the limited partnership
27 and the other partners in the conduct and winding up of the
28 limited partnership's activities is limited to refraining from
29 engaging in grossly negligent or reckless conduct, intentional
30 misconduct, or a knowing violation of law.

31 (d) A general partner shall discharge the duties to the
32 partnership and the other partners under this chapter or under the
33 partnership agreement and exercise any rights consistently with
34 the obligation of good faith and fair dealing.

35 (e) A general partner does not violate a duty or obligation
36 under this chapter or under the partnership agreement merely
37 because the general partner's conduct furthers the general
38 partner's own interest.

39 15904.09. (a) A partnership agreement may provide for the
40 creation of classes of general partners. The partnership agreement

1 shall define the rights, powers, and duties of those classes
2 including rights, powers, and duties senior to other classes of
3 general partners.

4 (b) The partnership agreement may provide to all or certain
5 specified classes of general partners the right to vote separately
6 or with all or any class of the general partners on any matters.

7
8 Article 5. Contributions and Distributions
9

10 15905.01. A contribution of a partner may consist of tangible
11 or intangible property or other benefit to the limited partnership,
12 including money, services performed, promissory notes, other
13 agreements to contribute cash or property, and contracts for
14 services to be performed.

15 15905.02. (a) A partner's obligation to contribute money or
16 other property or other benefit to, or to perform services for, a
17 limited partnership is not excused by the partner's death,
18 disability, or other inability to perform personally.

19 (b) If a partner does not make a promised nonmonetary
20 contribution, the partner is obligated at the option of the limited
21 partnership to contribute money equal to the value of that
22 portion, as stated in the required information, of the stated
23 contribution which has not been made.

24 (c) The obligation of a partner to make a contribution or return
25 money or other property paid or distributed in violation of this
26 chapter may be compromised only by consent of all partners. A
27 creditor of a limited partnership which extends credit or
28 otherwise acts in reliance on an obligation described in
29 subdivision (a), without notice of any compromise under this
30 subdivision, may enforce the original obligation.

31 (d) A partnership agreement may provide that the interest of a
32 partner who fails to make any contribution or other payment that
33 the partner is required to make will be subject to specific
34 remedies for, or specific consequences of, the failure. A
35 provision shall be enforceable in accordance with its terms unless
36 the partner seeking to invalidate the provision establishes that the
37 provision was unreasonable under the circumstances existing at
38 the time the agreement was made. The specific remedies or
39 consequences may include loss of voting, approval, or other
40 rights, loss of the partner's ability to actively participate in the

1 management and operations of the partnership, liquidated
2 damages, or a reduction of the defaulting partner's economic
3 rights. The reduction of the defaulting partner's economic rights
4 may include one or more of the following provisions:

5 (1) Diluting, reducing or eliminating the defaulting partner's
6 proportionate interest in the partnership.

7 (2) Subordinating the defaulting partner's interest in the
8 partnership to that of nondefaulting partners.

9 (3) Permitting a forced sale of the partnership interest.

10 (4) Permitting the lending or contribution by other partners of
11 the amount necessary to meet the defaulting partner's
12 commitment.

13 (5) Adjusting the interest rates or other rates of return,
14 preferred, priority, or otherwise, with respect to contributions by
15 or capital accounts of the other partners.

16 (6) Fixing the value of the defaulting partner's interest in the
17 partnership by appraisal, formula and redemption, or sale of the
18 defaulting partner's interest in the partnership at a percentage of
19 that value.

20 (7) Nothing in this section shall be construed to affect the
21 rights of third-party creditors of the partnership to seek equitable
22 remedies nor any rights existing under the Uniform Fraudulent
23 Transfer Act (Chapter 1 (commencing with Section 3439) of
24 Title 2 of Part 2 of Division 4 of the Civil Code).

25 15905.03. A distribution by a limited partnership must be
26 shared among the partners on the basis of the value, as stated in
27 the required records when the limited partnership decides to
28 make the distribution, of the contributions the limited partnership
29 has received from each partner.

30 15905.035. The profits and losses of a limited partnership
31 shall be allocated among the partners in the manner provided in
32 the partnership agreement. If the partnership agreement does not
33 otherwise provide, profits and losses shall be allocated in the
34 same manner as the partners share distributions.

35 15905.04. A partner does not have a right to any distribution
36 before the dissolution and winding up of the limited partnership
37 unless the limited partnership decides to make an interim
38 distribution.

39 15905.05. A person does not have a right to receive a
40 distribution on account of dissociation.

1 15905.06. A partner does not have a right to demand or
2 receive any distribution from a limited partnership in any form
3 other than cash. Subject to subdivision (b) of Section 15908.11, a
4 limited partnership may distribute an asset in kind to the extent
5 each partner receives a percentage of the asset equal to the
6 partner's share of distributions.

7 15905.07. When a partner or transferee becomes entitled to
8 receive a distribution, the partner or transferee has the status of,
9 and is entitled to all remedies available to, a creditor of the
10 limited partnership with respect to the distribution. However, the
11 limited partnership's obligation to make a distribution is subject
12 to offset for any amount owed to the limited partnership by the
13 partner or dissociated partner on whose account the distribution
14 is made.

15 15905.08. (a) A limited partnership may not make a
16 distribution in violation of the partnership agreement.

17 (b) A limited partnership may not make a distribution if after
18 the distribution:

19 (1) the limited partnership would not be able to pay its debts as
20 they become due in the ordinary course of the limited
21 partnership's activities; or

22 (2) the limited partnership's total assets would be less than the
23 sum of its total liabilities plus the amount that would be needed,
24 if the limited partnership were to be dissolved, wound up, and
25 terminated at the time of the distribution, to satisfy the
26 preferential rights upon dissolution, winding up, and termination
27 of partners whose preferential rights are superior to those of
28 persons receiving the distribution.

29 (c) A limited partnership may base a determination that a
30 distribution is not prohibited under subdivision (b) on financial
31 statements prepared on the basis of accounting practices and
32 principles that are reasonable in the circumstances or on a fair
33 valuation or other method that is reasonable in the circumstances.

34 (d) Except as otherwise provided in subdivision (g), the effect
35 of a distribution under subdivision (b) is measured:

36 (1) in the case of distribution by purchase, redemption, or
37 other acquisition of a transferable interest in the limited
38 partnership, as of the date money or other property is transferred
39 or debt incurred by the limited partnership; and

40 (2) in all other cases, as of the date:

1 (A) the distribution is authorized, if the payment occurs within
2 120 days after that date; or

3 (B) the payment is made, if payment occurs more than 120
4 days after the distribution is authorized.

5 (e) A limited partnership's indebtedness to a partner incurred
6 by reason of a distribution made in accordance with this section
7 is at parity with the limited partnership's indebtedness to its
8 general unsecured creditors.

9 (f) A limited partnership's indebtedness, including
10 indebtedness issued in connection with or as part of a
11 distribution, is not considered a liability for purposes of
12 subdivision (b) if the terms of the indebtedness provide that
13 payment of principal and interest are made only to the extent that
14 a distribution could then be made to partners under this section.

15 (g) If indebtedness is issued as a distribution, each payment of
16 principal or interest on the indebtedness is treated as a
17 distribution, the effect of which is measured on the date the
18 payment is made.

19 15905.09. (a) A general partner that consents to a
20 distribution made in violation of Section 15905.08 is personally
21 liable to the limited partnership for the amount of the distribution
22 which exceeds the amount that could have been distributed
23 without the violation if it is established that in consenting to the
24 distribution the general partner failed to comply with Section
25 15904.08.

26 (b) A partner or transferee that received a distribution knowing
27 that the distribution to that partner or transferee was made in
28 violation of Section 15905.08 is personally liable to the limited
29 partnership but only to the extent that the distribution received by
30 the partner or transferee exceeded the amount that could have
31 been properly paid under Section 15905.08.

32 (c) A general partner against which an action is commenced
33 under subdivision (a) may:

34 (1) implead in the action any other person that is liable under
35 subdivision (a) and compel contribution from the person; and

36 (2) implead in the action any person that received a
37 distribution in violation of subdivision (b) and compel
38 contribution from the person in the amount the person received in
39 violation of subdivision (b).

1 (d) An action under this section is barred if it is not
2 commenced within four years after the distribution.

3
4 Article 6. Dissociation
5

6 15906.01. (a) A person does not have a right to dissociate as
7 a limited partner before the termination of the limited
8 partnership.

9 (b) A person is dissociated from a limited partnership as a
10 limited partner upon the occurrence of any of the following
11 events:

12 (1) the limited partnership's having notice of the person's
13 express will to withdraw as a limited partner or on a later date
14 specified by the person;

15 (2) an event agreed to in the partnership agreement as causing
16 the person's dissociation as a limited partner;

17 (3) the person's expulsion as a limited partner pursuant to the
18 partnership agreement;

19 (4) the person's expulsion as a limited partner by the
20 unanimous consent of the other partners if:

21 (A) it is unlawful to carry on the limited partnership's
22 activities with the person as a limited partner;

23 (B) there has been a transfer of all of the person's transferable
24 interest in the limited partnership, other than a transfer for
25 security purposes, or a court order charging the person's interest,
26 which has not been foreclosed;

27 (C) the person is a corporation and, within 90 days after the
28 limited partnership notifies the person that it will be expelled as a
29 limited partner because it has filed a certificate of dissolution or
30 the equivalent, its charter has been revoked, or its right to
31 conduct business has been suspended by the jurisdiction of its
32 incorporation, there is no revocation of the certificate of
33 dissolution or no reinstatement of its charter or its right to
34 conduct business; or

35 (D) the person is a limited liability company or partnership
36 that has been dissolved and whose business is being wound up;

37 (5) on application by the limited partnership, the person's
38 expulsion as a limited partner by judicial order because:

39 (A) the person engaged in wrongful conduct that adversely
40 and materially affected the limited partnership's activities;

1 (B) the person willfully or persistently committed a material
2 breach of the partnership agreement or of the obligation of good
3 faith and fair dealing under subdivision (b) of Section 15903.05;
4 or

5 (C) the person engaged in conduct relating to the limited
6 partnership's activities which makes it not reasonably practicable
7 to carry on the activities with the person as limited partner;

8 (6) in the case of a person who is an individual, the person's
9 death;

10 (7) in the case of a person that is a trust or is acting as a
11 limited partner by virtue of being a trustee of a trust, distribution
12 of the trust's entire transferable interest in the limited
13 partnership, but not merely by reason of the substitution of a
14 successor trustee;

15 (8) in the case of a person that is an estate or is acting as a
16 limited partner by virtue of being a personal representative of an
17 estate, distribution of the estate's entire transferable interest in
18 the limited partnership, but not merely by reason of the
19 substitution of a successor personal representative;

20 (9) termination of a limited partner that is not an individual,
21 partnership, limited liability company, corporation, trust, or
22 estate;

23 (10) the limited partnership's participation in a conversion or
24 merger under Article 11 (commencing with Section 15911.01), if
25 the limited partnership:

26 (A) is not the converted or surviving entity; or

27 (B) is the converted or surviving entity but, as a result of the
28 conversion or merger, the person ceases to be a limited partner.

29 15906.02. (a) Upon a person's dissociation as a limited
30 partner:

31 (1) subject to Section 15907.04, the person does not have
32 further rights as a limited partner;

33 (2) the person's obligation of good faith and fair dealing as a
34 limited partner under subdivision (b) of Section 15903.05
35 continues only as to matters arising and events occurring before
36 the dissociation; and

37 (3) subject to Section 15907.04 and Article 11 (commencing
38 with Section 15911.01), any transferable interest owned by the
39 person in the person's capacity as a limited partner immediately
40 before dissociation is owned by the person as a mere transferee.

1 (b) A person's dissociation as a limited partner does not of
2 itself discharge the person from any obligation to the limited
3 partnership or the other partners which the person incurred while
4 a limited partner.

5 15906.03. A person is dissociated from a limited partnership
6 as a general partner upon the occurrence of any of the following
7 events:

8 (a) the limited partnership's having notice of the person's
9 express will to withdraw as a general partner or on a later date
10 specified by the person;

11 (b) an event agreed to in the partnership agreement as causing
12 the persons dissociation as a general partner;

13 (c) the person's expulsion as a general partner pursuant to the
14 partnership agreement;

15 (d) the person's expulsion as a general partner by the
16 unanimous consent of the other partners if:

17 (1) it is unlawful to carry on the limited partnership's activities
18 with the person as a general partner;

19 (2) there has been a transfer of all or substantially all of the
20 person's transferable interest in the limited partnership, other
21 than a transfer for security purposes, or a court order charging the
22 person's interest, which has not been foreclosed;

23 (3) the person is a corporation and, within 90 days after the
24 limited partnership notifies the person that it will be expelled as a
25 general partner because it has filed a certificate of dissolution or
26 the equivalent, its charter has been revoked, or its right to
27 conduct business has been suspended by the jurisdiction of its
28 incorporation, there is no revocation of the certificate of
29 dissolution or no reinstatement of its charter or its right to
30 conduct business; or

31 (4) the person is a limited liability company or partnership that
32 has been dissolved and whose business is being wound up;

33 (e) on application by the limited partnership, the person's
34 expulsion as a general partner by judicial order because:

35 (1) the person engaged in wrongful conduct that adversely and
36 materially affected the limited partnership activities;

37 (2) the person willfully or persistently committed a material
38 breach of the partnership agreement or of a duty owed to the
39 partnership or the other partners under Section 15904.08; or

- 1 (3) the person engaged in conduct relating to the limited
2 partnership's activities which makes it not reasonably practicable
3 to carry on the activities of the limited partnership with the
4 person as a general partner;
- 5 (f) the person's:
- 6 (1) becoming a debtor in bankruptcy;
- 7 (2) execution of an assignment for the benefit of creditors;
- 8 (3) seeking, consenting to, or acquiescing in the appointment
9 of a trustee, receiver, or liquidator of the person or of all or
10 substantially all of the person's property; or
- 11 (4) failure, within 90 days after the appointment, to have
12 vacated or stayed the appointment of a trustee, receiver, or
13 liquidator of the general partner or of all or substantially all of
14 the person's property obtained without the person's consent or
15 acquiescence, or failing within 90 days after the expiration of a
16 stay to have the appointment vacated;
- 17 (g) in the case of a person who is an individual:
- 18 (1) the person's death;
- 19 (2) the appointment of a guardian or general conservator for
20 the person; or
- 21 (3) a judicial determination that the person has otherwise
22 become incapable of performing the person's duties as a general
23 partner under the partnership agreement;
- 24 (h) in the case of a person that is a trust or is acting as a
25 general partner by virtue of being a trustee of a trust, distribution
26 of the trust's entire transferable interest in the limited
27 partnership, but not merely by reason of the substitution of a
28 successor trustee;
- 29 (i) in the case of a person that is an estate or is acting as a
30 general partner by virtue of being a personal representative of an
31 estate, distribution of the estate's entire transferable interest in
32 the limited partnership, but not merely by reason of the
33 substitution of a successor personal representative;
- 34 (j) termination of a general partner that is not an individual,
35 partnership, limited liability company, corporation, trust, or
36 estate; or
- 37 (k) the limited partnership's participation in a conversion or
38 merger under Article 11 (commencing with Section 15911.01), if
39 the limited partnership:
- 40 (1) is not the converted or surviving entity; or

1 (2) is the converted or surviving entity but, as a result of the
2 conversion or merger, the person ceases to be a general partner.

3 15906.04. (a) A person has the power to dissociate as a
4 general partner at any time, rightfully or wrongfully, by express
5 will pursuant to subdivision (a) of Section 15906.03.

6 (b) A person's dissociation as a general partner is wrongful
7 only if:

8 (1) it is in breach of an express provision of the partnership
9 agreement; or

10 (2) it occurs before the termination of the limited partnership,
11 and:

12 (A) the person withdraws as a general partner by express will;

13 (B) the person is expelled as a general partner by judicial
14 determination under subdivision (e) of Section 15906.03;

15 (C) the person is dissociated as a general partner by becoming
16 a debtor in bankruptcy; or

17 (D) in the case of a person that is not an individual, trust other
18 than a business trust, or estate, the person is expelled or
19 otherwise dissociated as a general partner because it willfully
20 dissolved or terminated.

21 (c) A person that wrongfully dissociates as a general partner is
22 liable to the limited partnership and, subject to Section 15910.01,
23 to the other partners for damages caused by the dissociation. The
24 liability is in addition to any other obligation of the general
25 partner to the limited partnership or to the other partners.

26 15906.05. (a) Upon a person's dissociation as a general
27 partner:

28 (1) the person's right to participate as a general partner in the
29 management and conduct of the partnership's activities
30 terminates;

31 (2) the person's duty of loyalty as a general partner under
32 paragraph (3) of subdivision (b) of Section 15904.08 terminates;

33 (3) the person's duty of loyalty as a general partner under
34 paragraphs (1) and (2) of subdivision (b) of Section 15904.08 and
35 duty of care under subdivision (c) of Section 15904.08 continue
36 only with regard to matters arising and events occurring before
37 the person's dissociation as a general partner;

38 (4) the person may sign and deliver to the Secretary of State
39 for filing , on a form prescribed by the Secretary of State, a
40 certificate of dissociation pertaining to the person and, at the

1 request of the limited partnership, shall sign an amendment to the
2 certificate of limited partnership which states that the person has
3 dissociated; and

4 (5) subject to Section 15907.04 and Article 11 (commencing
5 with Section 15911.01), any transferable interest owned by the
6 person immediately before dissociation in the person's capacity
7 as a general partner is owned by the person as a mere transferee.

8 (b) A person's dissociation as a general partner does not of
9 itself discharge the person from any obligation to the limited
10 partnership or the other partners which the person incurred while
11 a general partner.

12 15906.06. (a) After a person is dissociated as a general
13 partner and before the limited partnership is dissolved, converted
14 under Article 11 (commencing with Section 15911.01), or
15 merged out of existence under that article, the limited partnership
16 is bound by an act of the person only if:

17 (1) the act would have bound the limited partnership under
18 Section 15904.02 before the dissociation; and

19 (2) at the time the other party enters into the transaction:

20 (A) less than two years have passed since the dissociation; and

21 (B) the other party does not have notice of the dissociation and
22 reasonably believes that the person is a general partner.

23 (b) If a limited partnership is bound under subdivision (a), the
24 person dissociated as a general partner which caused the limited
25 partnership to be bound is liable:

26 (1) to the limited partnership for any damage caused to the
27 limited partnership arising from the obligation incurred under
28 subdivision (a); and

29 (2) if a general partner or another person dissociated as a
30 general partner is liable for the obligation, to the general partner
31 or other person for any damage caused to the general partner or
32 other person arising from the liability.

33 15906.07. (a) A person's dissociation as a general partner
34 does not of itself discharge the person's liability as a general
35 partner for an obligation of the limited partnership incurred
36 before dissociation. Except as otherwise provided in subdivisions
37 (b) and (c), the person is not liable for a limited partnership's
38 obligation incurred after dissociation.

39 (b) A person whose dissociation as a general partner resulted
40 in a dissolution and winding up of the limited partnership's

1 activities is liable to the same extent as a general partner under
2 Section 15904.04 on an obligation incurred by the limited
3 partnership under Section 15908.04.

4 (c) A person that has dissociated as a general partner but
5 whose dissociation did not result in a dissolution and winding up
6 of the limited partnership's activities is liable on a transaction
7 entered into by the limited partnership after the dissociation only
8 if:

- 9 (1) a general partner would be liable on the transaction; and
10 (2) at the time the other party enters into the transaction:
11 (A) less than two years have passed since the dissociation; and
12 (B) the other party does not have notice of the dissociation and
13 reasonably believes that the person is a general partner.

14 (d) By agreement with a creditor of a limited partnership and
15 the limited partnership, a person dissociated as a general partner
16 may be released from liability to the creditor for an obligation of
17 the limited partnership.

18 (e) A person dissociated as a general partner is released from
19 liability for an obligation of the limited partnership if the limited
20 partnership's creditor, with notice of the person's dissociation as
21 a general partner but without the person's consent, agrees to a
22 material alteration in the nature or time of payment of the
23 obligation.

24
25 Article 7. Transferable Interests and Rights of Transferees and
26 Creditors
27

28 15907.01. The only interest of a partner which is transferable
29 is the partner's transferable interest. A transferable interest is
30 personal property.

31 15907.02. (a) A transfer, in whole or in part, of a partner's
32 transferable interest:

- 33 (1) is permissible;
34 (2) does not by itself cause the partner's dissociation or a
35 dissolution and winding up of the limited partnership's activities;
36 and
37 (3) does not, as against the other partners or the limited
38 partnership, entitle the transferee to participate in the
39 management or conduct of the limited partnership's activities, to
40 require access to information concerning the limited

1 partnership's transactions except as otherwise provided in
2 subdivision (c), or to inspect or copy the required information or
3 the limited partnership's other records or to exercise any other
4 rights or powers of a partner.

5 (b) A transferee has a right to receive, in accordance with the
6 transfer, distributions to which the transferor would otherwise be
7 entitled.

8 (c) A transferee is entitled to an account of the limited
9 partnership's transactions only upon the dissolution and winding
10 up of the limited partnership.

11 (d) Upon transfer, the transferor retains the rights of a partner
12 other than the interest in distributions transferred and retains all
13 duties and obligations of a partner.

14 (e) A limited partnership need not give effect to a transferee's
15 rights under this section until the limited partnership has notice
16 of the transfer.

17 (f) A transfer of a partner's transferable interest in the limited
18 partnership in violation of a restriction on transfer contained in
19 the partnership agreement is ineffective as to a person having
20 notice of the restriction at the time of transfer.

21 (g) A transferee that becomes a partner with respect to a
22 transferable interest is liable for the transferor's obligations under
23 Sections 15905.02 and 15905.09. However, the transferee is not
24 obligated for liabilities unknown to the transferee at the time the
25 transferee became a partner.

26 (h) A transferee of a partnership interest, including a transferee
27 of a general partner, may become a limited partner if and to the
28 extent that (1) the partnership agreement provides or (2) all
29 general partners and a majority in interest of the limited partners
30 consent.

31 15907.03. (a) On application to a court of competent
32 jurisdiction by any judgment creditor of a partner or transferee,
33 the court may charge the transferable interest of the judgment
34 debtor with payment of the unsatisfied amount of the judgment
35 with interest. To the extent so charged, the judgment creditor has
36 only the rights of a transferee. The court may appoint a receiver
37 of the share of the distributions due or to become due to the
38 judgment debtor in respect of the limited partnership and make
39 all other orders, directions, accounts, and inquiries the judgment

1 debtor might have made or which the circumstances of the case
2 may require to give effect to the charging order.

3 (b) A charging order constitutes a lien on the judgment
4 debtor's transferable interest. The court may order a foreclosure
5 upon the interest subject to the charging order at any time. The
6 purchaser at the foreclosure sale has the rights of a transferee.

7 (c) At any time before foreclosure, an interest charged may be
8 redeemed:

9 (1) by the judgment debtor;

10 (2) with property other than limited partnership property, by
11 one or more of the other partners; or

12 (3) with limited partnership property, by the limited
13 partnership with the consent of all partners whose interests are
14 not so charged.

15 (d) This chapter does not deprive any partner or transferee of
16 the benefit of any exemption laws applicable to the partner's or
17 transferee's transferable interest.

18 (e) This section provides the exclusive remedy by which a
19 judgment creditor of a partner or transferee may satisfy a
20 judgment out of the judgment debtor's transferable interest.

21 (f) No creditor of a partner shall have any right to obtain
22 possession or otherwise exercise legal or equitable remedies with
23 respect to the property of the limited partnership.

24 15907.04. If a partner dies, the deceased partner's personal
25 representative or other legal representative may exercise the
26 rights of a transferee as provided in Section 15907.02 and, for the
27 purposes of settling the estate, may exercise the rights of a
28 current limited partner under Section 15903.04.

30 Article 8. Dissolution

31
32 15908.01. Except as otherwise provided in Section 15908.02,
33 a limited partnership is dissolved, and its activities must be
34 wound up, only upon the occurrence of any of the following:

35 (a) the happening of an event specified in the partnership
36 agreement;

37 (b) the consent of all general partners and of limited partners
38 owning a majority of the rights to receive distributions as limited
39 partners at the time the consent is to be effective;

40 (c) after the dissociation of a person as a general partner:

1 (1) if the limited partnership has at least one remaining general
2 partner, and a consent to dissolve the limited partnership is given
3 within 90 days after the dissociation by partners owning a
4 majority of the rights to receive distributions as partners at the
5 time the consent is to be effective; or

6 (2) if the limited partnership does not have a remaining
7 general partner, the passage of 90 days after the dissociation,
8 unless before the end of the period:

9 (A) consent to continue the activities of the limited partnership
10 and admit at least one general partner is given by limited partners
11 owning a majority of the rights to receive distributions as limited
12 partners at the time the consent is to be effective; and

13 (B) at least one person is admitted as a general partner in
14 accordance with the consent; or

15 (d) the passage of 90 days after the dissociation of the limited
16 partnership's last limited partner, unless before the end of the
17 period the limited partnership admits at least one limited partner.

18 15908.02. (a) On application by a partner, a court of
19 competent jurisdiction may order dissolution of a limited
20 partnership if it is not reasonably practicable to carry on the
21 activities of the limited partnership in conformity with the
22 partnership agreement.

23 (b) In any suit for judicial dissolution, the other partners may
24 avoid the dissolution of the limited partnership by purchasing for
25 cash the partnership interests owned by the partners so initiating
26 the proceeding (the "moving parties") at their fair market value.
27 In fixing the value, the amount of any damages resulting if the
28 initiation of the dissolution is a breach by any moving party or
29 parties of an agreement with the purchasing party or parties,
30 including, without limitation, the partnership agreement, may be
31 deducted from the amount payable to the moving party or parties.

32 (c) If the purchasing parties (1) elect to purchase the
33 partnership interests owned by the moving parties, (2) are unable
34 to agree with the moving parties upon the fair market value of the
35 partnership interests, and (3) give bond with sufficient security to
36 pay the estimated reasonable expenses, including attorneys' fees,
37 of the moving parties if the expenses are recoverable under
38 paragraph (3), the court, upon application of the purchasing
39 parties, either in the pending action or in a proceeding initiated in
40 the superior court of the proper county by the purchasing parties,

1 shall stay the winding up and dissolution proceeding and shall
2 proceed to ascertain and fix the fair market value of the
3 partnership interests owned by the moving parties.

4 (d) The court shall appoint three disinterested appraisers to
5 appraise the fair market value of the partnership interests owned
6 by the moving parties, and shall make an order referring the
7 matter to the appraisers so appointed for the purpose of
8 ascertaining that value. The order shall prescribe the time and
9 manner of producing evidence, if evidence is required. The
10 award of the appraisers or a majority of them, when confirmed
11 by the court, shall be final and conclusive upon all parties. The
12 court shall enter a decree that shall provide in the alternative for
13 winding up and dissolution of the limited partnership unless
14 payment is made for the partnership interests within the time
15 specified by the decree. If the purchasing parties do not make
16 payment for the partnership interests within the time specified,
17 judgment shall be entered against them and the surety or sureties
18 on the bond for the amount of the expenses, including attorneys'
19 fees, of the moving parties. Any member aggrieved by the action
20 of the court may appeal therefrom.

21 (e) If the purchasing parties desire to prevent the winding up
22 and dissolution of the limited partnership, they shall pay to the
23 moving parties the value of their partnership interests ascertained
24 and decreed within the time specified pursuant to this section, or,
25 in the case of an appeal, as fixed on appeal. On receiving that
26 payment or the tender thereof, the moving parties shall transfer
27 their partnership interests to the purchasing parties.

28 (f) For the purposes of this section, the valuation date shall be
29 the date upon which the action for judicial dissolution was
30 commenced. However, the court may, upon the hearing of a
31 motion by any party, and for good cause shown, designate some
32 other date as the valuation date.

33 15908.03. (a) A limited partnership continues after
34 dissolution only for the purpose of winding up its activities.

35 (b) In winding up its activities, the limited partnership:

36 (1) may amend its certificate of limited partnership to state
37 that the limited partnership is dissolved, preserve the limited
38 partnership business or property as a going concern for a
39 reasonable time, prosecute and defend actions and proceedings,
40 whether civil, criminal, or administrative, transfer the limited

1 partnership's property, settle disputes by mediation or arbitration,
2 file a certificate of cancellation as provided in Section 15902.03,
3 and perform other necessary acts; and

4 (2) shall discharge the limited partnership's liabilities, settle
5 and close the limited partnership's activities, and marshal and
6 distribute the assets of the partnership.

7 (c) If a dissolved limited partnership does not have a general
8 partner, a person to wind up the dissolved limited partnership's
9 activities may be appointed by the consent of limited partners
10 owning a majority of the rights to receive distributions as limited
11 partners at the time the consent is to be effective. A person
12 appointed under this subdivision:

13 (1) has the powers of a general partner under Section
14 15908.04; and

15 (2) shall promptly amend the certificate of limited partnership
16 to state:

17 (A) that the limited partnership does not have a general
18 partner;

19 (B) the name of the person that has been appointed to wind up
20 the limited partnership; and

21 (C) the address of the person.

22 (d) On the application of any partner, the appropriate court
23 may order judicial supervision of the winding up, including the
24 appointment of a person to wind up the dissolved limited
25 partnership's activities, if:

26 (1) a limited partnership does not have a general partner and
27 within a reasonable time following the dissolution no person has
28 been appointed pursuant to subdivision (c); or

29 (2) the applicant establishes other good cause.

30 (e) Unless otherwise provided in the partnership agreement,
31 the limited partners winding up the affairs of the partnership
32 pursuant to this section shall be entitled to reasonable
33 compensation.

34 15908.04. (a) A limited partnership is bound by a general
35 partner's act after dissolution which:

36 (1) is appropriate for winding up the limited partnership's
37 activities; or

38 (2) would have bound the limited partnership under Section
39 15904.02 before dissolution, if, at the time the other party enters

1 into the transaction, the other party does not have notice of the
2 dissolution.

3 (b) A person dissociated as a general partner binds a limited
4 partnership through an act occurring after dissolution if:

5 (1) at the time the other party enters into the transaction:

6 (A) less than two years have passed since the dissociation; and

7 (B) the other party does not have notice of the dissociation and
8 reasonably believes that the person is a general partner; and

9 (2) the act:

10 (A) is appropriate for winding up the limited partnership's
11 activities; or

12 (B) would have bound the limited partnership under Section
13 15904.02 before dissolution and at the time the other party enters
14 into the transaction the other party does not have notice of the
15 dissolution.

16 15908.05. (a) If a general partner having knowledge of the
17 dissolution causes a limited partnership to incur an obligation
18 under subdivision (a) of Section 15908.04 by an act that is not
19 appropriate for winding up the partnership's activities, the
20 general partner is liable:

21 (1) to the limited partnership for any damage caused to the
22 limited partnership arising from the obligation; and

23 (2) if another general partner or a person dissociated as a
24 general partner is liable for the obligation, to that other general
25 partner or person for any damage caused to that other general
26 partner or person arising from the liability.

27 (b) If a person dissociated as a general partner causes a limited
28 partnership to incur an obligation under subdivision (b) of
29 Section 15908.04, the person is liable:

30 (1) to the limited partnership for any damage caused to the
31 limited partnership arising from the obligation; and

32 (2) if a general partner or another person dissociated as a
33 general partner is liable for the obligation, to the general partner
34 or other person for any damage caused to the general partner or
35 other person arising from the liability.

36 15908.06. (a) A dissolved limited partnership may dispose of
37 the known claims against it by following the procedure described
38 in subdivision (b).

39 (b) A dissolved limited partnership may notify its known
40 claimants of the dissolution in a record. The notice must:

1 (1) specify the information required to be included in a claim;
2 (2) provide a mailing address to which the claim is to be sent;
3 (3) state the deadline for receipt of the claim, which may not
4 be less than 120 days after the date the notice is received by the
5 claimant; and

6 (4) state that the claim will be barred if not received by the
7 deadline.

8 (c) A claim against a dissolved limited partnership is barred if
9 the requirements of subdivision (b) are met and:

10 (1) the claim is not received by the specified deadline; or

11 (2) in the case of a claim that is timely received but rejected in
12 writing by the dissolved limited partnership, the claimant does
13 not commence an action to enforce the claim against the limited
14 partnership within 90 days after the receipt of a written notice of
15 the rejection.

16 (d) This section does not apply to a claim based on an event
17 occurring after the effective date of dissolution or a liability that
18 is contingent on that date.

19 15908.07. (a) A dissolved limited partnership may publish
20 notice of its dissolution and request persons having claims
21 against the limited partnership to present them in accordance
22 with the notice.

23 (b) The notice must:

24 (1) be published at least once in a newspaper of general
25 circulation in the county in which the dissolved limited
26 partnership's principal office is located or, if it has none in this
27 state, in the county in which the limited partnership's designated
28 office is or was last located;

29 (2) describe the information required to be contained in a
30 claim and provide a mailing address to which the claim is to be
31 sent; and

32 (3) state that a claim against the limited partnership is barred
33 unless an action to enforce the claim is commenced within four
34 years after publication of the notice.

35 (c) If a dissolved limited partnership publishes a notice in
36 accordance with subdivision (b), the claim of each of the
37 following claimants is barred unless the claimant commences an
38 action to enforce the claim against the dissolved limited
39 partnership within four years after the publication date of the
40 notice:

1 (1) a claimant that did not receive notice in a record under
2 Section 15908.06;

3 (2) a claimant whose claim was timely sent to the dissolved
4 limited partnership but not acted on; and

5 (3) a claimant whose claim is contingent or based on an event
6 occurring after the effective date of dissolution.

7 (d) A claim not barred under this section may be enforced:

8 (1) against the dissolved limited partnership, to the extent of
9 its undistributed assets;

10 (2) if the assets have been distributed in liquidation, against a
11 partner or transferee to the extent of that person's proportionate
12 share of the claim or the limited partnership's assets distributed
13 to the partner or transferee in liquidation, whichever is less, but a
14 person's total liability for all claims under this paragraph does
15 not exceed the total amount of assets distributed to the person as
16 part of the winding up of the dissolved limited partnership; or

17 (3) against any person liable on the claim under Section
18 15904.04.

19 (e) Publication of a notice of dissolution of a limited
20 partnership pursuant to this section shall not bar the collection of
21 any tax, interest, penalty or addition to tax under Part 10
22 (commencing with Section 17001) of, Part 10.20 (commencing
23 with Section 18401) of, and Part 11 (commencing with Section
24 23001) of, Division 2 of the Revenue and Taxation Code.

25 15908.08. If a claim against a dissolved limited partnership is
26 barred under Section 15908.06 or 15908.07, any corresponding
27 claim under Section 15904.04 is also barred.

28 15908.09. (a) In winding up a limited partnership's activities,
29 the assets of the limited partnership, including the contributions
30 required by this section, must be applied to satisfy the limited
31 partnership's obligations to creditors, including, to the extent
32 permitted by law, partners that are creditors.

33 (b) Any surplus remaining after the limited partnership
34 complies with subdivision (a) must be returned to the partners as
35 they share in distributions.

36 (c) If a limited partnership's assets are insufficient to satisfy
37 all of its obligations under subdivision (a) the following rules
38 apply:

39 (1) Each person that was a general partner when the obligation
40 was incurred and that has not been released from the obligation

1 under Section 15906.07 shall contribute to the limited partnership
2 for the purpose of enabling the limited partnership to satisfy the
3 obligation. The contribution due from each of those persons is in
4 proportion to the right to receive distributions in the capacity of
5 general partner in effect for each of those persons when the
6 obligation was incurred.

7 (2) If a person does not contribute the full amount required
8 under paragraph (1) with respect to an unsatisfied obligation of
9 the limited partnership, the other persons required to contribute
10 by paragraph (1) on account of the obligation shall contribute the
11 additional amount necessary to discharge the obligation. The
12 additional contribution due from each of those other persons is in
13 proportion to the right to receive distributions in the capacity of
14 general partner in effect for each of those other persons when the
15 obligation was incurred.

16 (3) If a person does not make the additional contribution
17 required by paragraph (2), further additional contributions are
18 determined and due in the same manner as provided in that
19 paragraph.

20 (d) A person that makes an additional contribution under
21 paragraph (2) or (3) of subdivision (c) may recover from any
22 person whose failure to contribute under paragraph (1) or (2) of
23 subdivision (c) necessitated the additional contribution. A person
24 may not recover under this subdivision more than the amount
25 additionally contributed. A person's liability under this
26 subdivision may not exceed the amount the person failed to
27 contribute.

28 (e) The estate of a deceased individual is liable for the
29 person's obligations under this section.

30 (f) An assignee for the benefit of creditors of a limited
31 partnership or a partner, or a person appointed by a court to
32 represent creditors of a limited partnership or a partner, may
33 enforce a person's obligation to contribute under subdivision (c).
34

35 Article 9. Foreign Limited Partnership

36

37 15909.01. (a) The laws of the state or other jurisdiction under
38 which a foreign limited partnership is organized govern relations
39 among the partners of the foreign limited partnership and
40 between the partners and the foreign limited partnership and the

1 liability of partners as partners for an obligation of the foreign
2 limited partnership, except as to foreign limited liability limited
3 partnerships, which shall be treated as if they were foreign
4 limited partnerships.

5 (b) A foreign limited partnership may not be denied a
6 certificate of registration by reason of any difference between the
7 laws of the jurisdiction under which the foreign limited
8 partnership is organized and the laws of this state.

9 (c) A certificate of registration does not authorize a foreign
10 limited partnership to engage in any business or exercise any
11 power that a limited partnership may not engage in or exercise in
12 this state.

13 15909.02. (a) A foreign limited partnership may apply for a
14 certificate of registration to transact business in this state by
15 delivering an application signed and acknowledged by a general
16 partner of the foreign limited partnership to, and on a form
17 prescribed by, the Secretary of State for filing. The application
18 must state:

19 (1) the name of the foreign limited partnership and, if the
20 name does not comply with Section 15901.08, an alternate name
21 adopted pursuant to subdivision (a) of Section 15909.05.

22 (2) the name of the state or other jurisdiction under whose law
23 the foreign limited partnership is organized and the date of its
24 formation;

25 (3) the address of the foreign limited partnership's designated
26 office and, if the laws of the jurisdiction under which the foreign
27 limited partnership is organized require the foreign limited
28 partnership to maintain an office in that jurisdiction, the address
29 of the required office;

30 (4) the name and address of the foreign limited partnership's
31 initial agent for service of process in this state in accordance with
32 paragraph (1) of subdivision ~~(a)~~ (d) of Section 15901.16;

33 (5) the name and address of each of the foreign limited
34 partnership's general partners; and

35 (6) whether the foreign limited partnership is a foreign limited
36 liability limited partnership.

37 (b) A foreign limited partnership shall deliver with the
38 completed application a certificate of existence or a record of
39 similar import signed by the Secretary of State or other official
40 having custody of the foreign limited partnership's publicly filed

1 records in the state or other jurisdiction under whose law the
2 foreign limited partnership is organized.

3 15909.03. (a) Activities of a foreign limited partnership that
4 do not constitute transacting business in this state for registration
5 purposes within the meaning of this article include the activities
6 set forth in subdivision (ai) of Section 15901.02.

7 (b) For purposes of this article, the ownership in this state of
8 income-producing real property or tangible personal property,
9 other than property excluded under subdivision (a), constitutes
10 transacting business in this state.

11 (c) This section does not apply in determining the contacts or
12 activities that may subject a foreign limited partnership to service
13 of process, taxation jurisdiction, or regulation under any other
14 law of this state.

15 15909.04. Unless the Secretary of State determines that an
16 application for a certificate of registration does not comply with
17 the filing requirements of this chapter, the Secretary of State,
18 upon payment of all requisite fees, shall file the application and
19 shall issue to the foreign limited partnership a certificate of
20 registration stating the date of filing of the application and that
21 the foreign limited partnership is qualified to transact intrastate
22 business, subject, however, to any licensing requirements
23 otherwise imposed by the laws of this state.

24 15909.05. (a) A foreign limited partnership whose name does
25 not comply with Section 15901.08 may not obtain a certificate of
26 registration until it adopts, for the purpose of transacting business
27 in this state, an alternate name that complies with Section
28 15901.08.

29 (b) If a foreign limited partnership authorized to transact
30 business in this state changes its name to one that does not
31 comply with Section 15901.08, it may not thereafter transact
32 business in this state until it complies with subdivision (a) and
33 obtains an amended certificate of registration.

34 (c) The Secretary of State may cancel the application and
35 certificate of registration of a foreign limited partnership if a
36 check or other remittance accepted in payment of the filing fee is
37 not paid upon presentation. Upon receiving written notification
38 that the item presented for payment has not been honored for
39 payment, the Secretary of State shall give a first written notice of
40 the applicability of this section to the agent for service of process

1 or to the person submitting the instrument. Thereafter, if the
2 amount has not been paid by cashier's check or equivalent, the
3 Secretary of State shall give a second written notice of
4 cancellation and the cancellation shall thereupon be effective.
5 The second notice shall be given 20 days or more after the first
6 notice and 90 days or less after the original filing.

7 15909.06. If any statement in the application for registration
8 of a foreign limited partnership was false when made or any
9 statements made have become erroneous, the foreign limited
10 partnership shall promptly deliver to, and on a form prescribed
11 by, the Secretary of State an amendment to the application for
12 registration signed and acknowledged by the general partner
13 amending the statement.

14 15909.07. (a) In order to cancel its certificate of registration
15 to transact business in this state, a foreign limited partnership
16 must deliver to and on a form prescribed by the Secretary of
17 State for filing a certificate of cancellation signed and
18 acknowledged by a general partner of the foreign limited
19 partnership. The registration is canceled when the certificate
20 becomes effective under Section 15902.06.

21 (b) A foreign limited partnership transacting business in this
22 state may not maintain an action or proceeding in this state unless
23 it has a certificate of registration to transact business in this state.

24 (c) Any foreign limited partnership that transacts intrastate
25 business in this state without registration is subject to a penalty of
26 twenty dollars (\$20) for each day that the unauthorized intrastate
27 business is transacted, up to a maximum of ten thousand dollars
28 (\$10,000). An action to recover this penalty may be brought, and
29 any recovery shall be paid, as provided in Section 2258.

30 (d) The failure of a foreign limited partnership to have a
31 certificate of registration to transact business in this state does
32 not impair the validity of a contract or act of the foreign limited
33 partnership or prevent the foreign limited partnership from
34 defending an action or proceeding in this state.

35 (e) A partner of a foreign limited partnership is not liable for
36 the obligations of the foreign limited partnership solely by reason
37 of the foreign limited partnership's having transacted business in
38 this state without a certificate of registration.

39 (f) If a foreign limited partnership transacts business in this
40 state without a certificate of registration or cancels its certificate

1 of registration, it appoints the Secretary of State as its agent for
2 service of process for rights of action arising out of the
3 transaction of business in this state.

4 15909.08. The Attorney General may maintain an action to
5 restrain a foreign limited partnership from transacting business in
6 this state in violation of this article.

7
8 Article 10. Actions by Partners
9

10 15910.01. (a) Subject to subdivision (b), a partner may
11 maintain a direct action against the limited partnership or another
12 partner for legal or equitable relief, with or without an accounting
13 as to the partnership's activities, to enforce the rights and
14 otherwise protect the interests of the partner, including rights and
15 interests under the partnership agreement or this chapter or
16 arising independently of the partnership relationship.

17 (b) A partner bringing a direct action under this section is
18 required to plead and prove an actual or threatened injury that is
19 not solely the result of an injury suffered or threatened to be
20 suffered by the limited partnership.

21 (c) The accrual of, and any time limitation on, a right of action
22 for a remedy under this section is governed by other law. A right
23 to an accounting upon a dissolution and winding up does not
24 revive a claim barred by law.

25 15910.02. A partner may bring a derivative action to enforce
26 a right of a limited partnership if:

27 (1) the partner first makes a demand on the general partners,
28 requesting that they cause the limited partnership to bring an
29 action to enforce the right, and the general partners do not bring
30 the action within a reasonable time; or

31 (2) a demand would be futile.

32 15910.03. (a) A derivative action may be maintained only by
33 a person that is a partner at the time the action is commenced
34 and:

35 (1) that was a partner when the conduct giving rise to action
36 occurred; or

37 (2) whose status as a partner devolved upon the person by
38 operation of law or pursuant to the terms of the partnership
39 agreement from a person that was a partner at the time of that
40 conduct.

(b) Notwithstanding the foregoing, any partner who does not meet the foregoing requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing, at which the court shall consider such evidence, by affidavit or testimony, as it deems material that (1) there is a strong prima facie case in favor of the claim asserted on behalf of the partnership, (2) no other similar action has been or is likely to be instituted, (3) the plaintiff acquired the shares before there was disclosure to the public and to the plaintiff of the wrongdoing of which plaintiff complains, (4) unless the action can be maintained the defendant may retain a gain derived from the defendant's willful breach of a fiduciary duty, and (5) the requested relief will not result in unjust enrichment of the partnership or any partner.

15910.04. In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the general partners' response to the demand; or

(2) why demand is excused as futile.

15910.05. (a) Except as otherwise provided in subdivision (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(2) if the derivative plaintiff receives any of those proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

15910.06. (a) In any derivative action, at any time within 30 days after service of summons upon the limited partnership or the general partner, the limited partnership or general partner may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish a bond as hereinafter provided. The motion shall be based upon one or both of the following grounds:

1 (1) That there is no reasonable possibility that the prosecution
2 of the cause of action alleged in the complaint against the moving
3 party will benefit the limited partnership or its partners.

4 (2) That the moving party, if other than the partnership, did
5 not participate in the transaction complained of in any capacity.
6 The court on application of the limited partnership or the general
7 partner may, for good cause shown, extend the 30-day period for
8 an additional period or periods not exceeding 60 days.

9 (b) At the hearing upon any motion pursuant to subdivision (a)
10 the court shall consider such evidence, written or oral, by
11 witnesses or affidavit, as may be material (1) to the ground or
12 grounds upon which the motion is based, or (2) to a
13 determination of the probable reasonable expenses, including
14 attorneys' fees, of the limited partnership and the general partner
15 which will be incurred in defense of the action. If the court
16 determines, after hearing the evidence adduced by the parties,
17 that the moving party has established a probability in support of
18 any of the grounds upon which the motion is based, the court
19 shall fix the amount of the bond, not to exceed fifty thousand
20 dollars (\$50,000), to be furnished by the plaintiff for reasonable
21 expenses, including attorneys fees, which may be incurred by the
22 moving party and the limited partnership in connection with the
23 action, including expenses for which the limited partnership may
24 become liable pursuant to subdivision (c) of Section 15904.06. A
25 ruling by the court on the motion shall not be a determination of
26 any issue in the action or of the merits thereof. If the court, upon
27 motion, makes a determination that a bond shall be furnished by
28 the plaintiff as to any one or more defendants, the action shall be
29 dismissed as to the defendant or defendants, unless the bond
30 required by the court has been furnished within such reasonable
31 time as may be fixed by the court.

32 (c) If the plaintiff shall, either before or after a motion is made
33 pursuant to subdivision (a), or any order or determination
34 pursuant to the motion, furnish a bond in the aggregate amount of
35 fifty thousand dollars (\$50,000) to secure the reasonable
36 expenses of the parties entitled to make the motion, the plaintiff
37 has complied with the requirements of this section and with any
38 order for a bond theretofore made, any such motion then pending
39 shall be dismissed and no further additional bond shall be
40 required.

1 (d) If a motion is filed pursuant to subdivision (a), no
2 pleadings need to be filed by the limited partnership or any other
3 defendant and the prosecution of the action shall be stayed until
4 10 days after the motion has been disposed of.

5
6 Article 11. Conversion and Merger
7

8 15911.01. For purposes of this article, the following
9 definitions apply:

10 (a) “Converted entity” means the other business entity or
11 foreign other business entity or foreign limited partnership that
12 results from a conversion of a domestic limited partnership under
13 this chapter.

14 (b) “Converted limited partnership” means a domestic limited
15 partnership that results from a conversion of an other business
16 entity or a foreign other business entity or a foreign limited
17 partnership pursuant to Section 15911.08.

18 (c) “Converting limited partnership” means a domestic limited
19 partnership that converts to an other business entity or a foreign
20 other business entity or a foreign limited partnership pursuant to
21 this chapter.

22 (d) “Converting entity” means an other business entity or a
23 foreign other business entity or a foreign limited partnership that
24 converts to a domestic limited partnership pursuant to the terms
25 of Section 15911.08.

26 (e) “Constituent corporation” means a corporation that is
27 merged with or into one or more limited partnerships or other
28 business entities, and that includes a surviving corporation.

29 (f) “Constituent limited partnership” means a limited
30 partnership that is merged with or into one or more other limited
31 partnerships or other business entities, and that includes a
32 surviving limited partnership.

33 (g) “Constituent other business entity” means an other
34 business entity that is merged with or into one or more limited
35 partnerships, and that includes a surviving other business entity.

36 (h) “Disappearing limited partnership” means a constituent
37 limited partnership that is not the surviving limited partnership.

38 (i) “Disappearing other business entity” means a constituent
39 other business entity that is not the surviving other business
40 entity.

1 (j) “Foreign other business entity” means an other business
2 entity formed under the laws of any state other than this state or
3 under the laws of a foreign country.

4 (k) “Other business entity” means a corporation, general
5 partnership, limited liability company, business trust, real estate
6 investment trust, or unincorporated association, other than a
7 nonprofit association, but excludes a limited partnership.

8 (l) “Surviving limited partnership” means a limited partnership
9 into which one or more other limited partnerships or other
10 business entities are merged.

11 (m) “Surviving other business entity” means another business
12 entity into which one or more limited partnerships are merged.

13 15911.02. (a) A limited partnership may be converted into
14 another business entity or a foreign other business entity or a
15 foreign limited partnership pursuant to this article if both of the
16 following apply:

17 (1) Pursuant to a conversion into a domestic or foreign
18 partnership or limited liability company or into a foreign limited
19 partnership, each of the partners of the converting limited
20 partnership receives a percentage interest in the profits and
21 capital of the converted entity equal to that partner’s percentage
22 interest in profits and capital of the converting limited
23 partnership as of the effective time of the conversion.

24 (2) Pursuant to a conversion into an other business entity or
25 foreign other business entity not specified in paragraph (1), both
26 of the following occur:

27 (A) Each limited partnership interest of the same class is
28 treated equally with respect to any distribution of cash, property,
29 rights, interests, or securities of the converted entity, unless all
30 limited partners of the class consent.

31 (B) The nonredeemable limited partnership interests of the
32 converting limited partnership are converted only into
33 nonredeemable interests or securities of the converted entity,
34 unless all holders of the unredeemable interests consent.

35 (b) The conversion of a limited partnership to an other
36 business entity or a foreign other business entity or a foreign
37 limited partnership may be effected only if both of the following
38 conditions are satisfied:

1 (1) The law under which the converted entity will exist
2 expressly permits the formation of that entity pursuant to a
3 conversion.

4 (2) The limited partnership complies with all other
5 requirements of any other law that applies to conversion to the
6 converted entity.

7 15911.03. (a) A limited partnership that desires to convert to
8 an other business entity or a foreign other business entity or a
9 foreign limited partnership shall approve a plan of conversion.

10 The plan of conversion shall state all of the following:

11 (1) The terms and conditions of the conversion.

12 (2) The place of the organization of the converted entity and of
13 the converting limited partnership and the name of the converted
14 entity after conversion.

15 (3) The manner of converting the limited and general
16 partnership interests of each of the partners into shares of,
17 securities of, or interests in, the converted entity.

18 (4) The provisions of the governing documents for the
19 converted entity, including the partnership agreement, limited
20 liability company articles of organization and operating
21 agreement, or articles or certificate of incorporation if the
22 converted entity is a corporation, to which the holders of interests
23 in the converted entity are to be bound.

24 (5) Any other details or provisions that are required by the
25 laws under which the converted entity is organized, or that are
26 desired by the parties.

27 (b) The plan of conversion shall be approved by all general
28 partners of the converting limited partnership and by a majority
29 in interest of each class of limited partners of the converting
30 limited partnership, unless a greater or lesser approval is required
31 by the partnership agreement of the converting limited
32 partnership. However, if the limited partners of the limited
33 partnership would become personally liable for any obligations
34 of the converted entity as a result of the conversion, the plan of
35 conversion shall be approved by all of the limited partners of the
36 converting limited partnership, unless the plan of conversion
37 provides that all limited partners will have dissenters' rights as
38 provided in Article 11.5 (commencing with Section 15911.20).

39 (c) Upon the effectiveness of the conversion, all partners of
40 the converting limited partnership, except those that exercise

1 dissenters' rights as provided in Article 11.5 (commencing with
2 Section 15911.20), shall be deemed parties to any governing
3 documents for the converted entity adopted as part of the plan of
4 conversion, irrespective of whether or not the partner has
5 executed the plan of conversion or the governing documents for
6 the converted entity. Any adoption of governing documents made
7 pursuant thereto shall be effective at the effective time or date of
8 the conversion.

9 (d) Notwithstanding its prior approval, a plan of conversion
10 may be amended before the conversion takes effect if the
11 amendment is approved by all general partners of the converting
12 limited partnership and, if the amendment changes any of the
13 principal terms of the plan of conversion, the amendment is
14 approved by the limited partners of the converting limited
15 partnership in the same manner and to the same extent as
16 required for the approval of the original plan of conversion.

17 (e) The general partners of a converting limited partnership
18 may, by unanimous approval at any time before the conversion is
19 effective, in their discretion, abandon a conversion, without
20 further approval by the limited partners, subject to the contractual
21 rights of third parties other than limited partners.

22 (f) The converted entity shall keep the plan of conversion at
23 the principal place of business of the converted entity if the
24 converted entity is a domestic partnership or foreign other
25 business entity, at the principal executive office of, or registrar or
26 transfer agent of, the converted entity, if the converted entity is a
27 domestic corporation, or at the office at which records are to be
28 kept under Section 17057 if the converted entity is a domestic
29 limited liability company. Upon the request of a partner of a
30 converting limited partnership, the authorized person on behalf of
31 the converted entity shall promptly deliver to the partner or the
32 holder of shares, interests, or other securities, at the expense of
33 the converted entity, a copy of the plan of conversion. A waiver
34 by a partner of the rights provided in this subdivision shall be
35 unenforceable.

36 15911.04. (a) A conversion into an other business entity or a
37 foreign other business entity or a foreign limited partnership shall
38 become effective upon the earliest date that all of the following
39 occur:

1 (1) The plan of conversion is approved by the partners of the
2 converting limited partnership, as provided in Section 15911.03.

3 (2) All documents required by law to create the converted
4 entity are filed, which documents shall also contain a statement
5 of conversion if required under Section 15911.06.

6 (3) The effective date, if set forth in the plan of conversion,
7 occurs.

8 (b) A copy of the statement of partnership authority or articles
9 of organization complying with Section 15911.06, if applicable,
10 duly certified by the Secretary of State, is conclusive evidence of
11 the conversion of the limited partnership.

12 15911.05. (a) The conversion of a limited partnership into a
13 foreign limited partnership or foreign other business entity shall
14 be required to comply with Section 15911.02.

15 (b) If the limited partnership is converting into a foreign
16 limited partnership or foreign other business entity, those
17 conversion proceedings shall be in accordance with the laws of
18 the state or place of organization of the foreign limited
19 partnership or foreign other business entity and the conversion
20 shall become effective in accordance with that law.

21 (c) (1) To enforce an obligation of a limited partnership that
22 has converted to a foreign limited partnership or foreign other
23 business entity, the Secretary of State shall only be the agent for
24 service of process in an action or proceeding against that
25 converted foreign entity if the agent designated for the service of
26 process for that entity is a natural person and cannot be found
27 with due diligence or if the agent is a corporation and no person
28 to whom delivery may be made may be located with due
29 diligence, or if no agent has been designated and if no one of the
30 officers, partners, managers, members, or agents of that entity
31 may be located after diligent search and it is so shown by
32 affidavit to the satisfaction of the court. The court then may make
33 an order that service be made by personal delivery to the
34 Secretary of State or to an assistant or deputy Secretary of State
35 of two copies of the process together with two copies of the
36 order, and the order shall set forth an address to which the
37 process shall be sent by the Secretary of State. Service in this
38 manner is deemed complete on the 10th day after delivery of the
39 process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to that entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to that entity, and the forwarding of the process shall be competent and prima facie evidence of the matters stated therein.

15911.06. (a) Upon conversion of a limited partnership, one of the following applies:

(1) If the limited partnership is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity and shall be filed with the Secretary of State.

(2) If the limited partnership is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity. If no statement of partnership authority is filed, a certificate of conversion shall be filed separately with the Secretary of State.

(3) If the limited partnership is converting into a domestic corporation, a statement of conversion shall be completed on the articles of incorporation for the converted entity and shall be filed with the Secretary of State.

(4) If the limited partnership is converting to a foreign limited partnership or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all general partners, unless a lesser number is provided in the certificate of limited partnership, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting limited partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, that equaled or exceeded the vote required under Section 15911.03, specifying

1 each class entitled to vote and the percentage vote required of
2 each class.

3 (3) The form of organization of the converted entity.

4 (4) The mailing address of the converted entity's agent for
5 service of process and the chief executive office of the converted
6 entity.

7 (c) The filing with the Secretary of State of a certificate of
8 conversion or a statement of partnership authority, articles of
9 organization, or articles of incorporation containing a statement
10 of conversion as set forth in subdivision (a) shall have the effect
11 of the filing of a certificate of cancellation by the converting
12 limited partnership, and no converting limited partnership that
13 has made the filing is required to file a certificate of cancellation
14 under Section 15902.03 as a result of that conversion.

15 15911.07. (a) Whenever a limited partnership or other
16 business entity having any real property in this state converts into
17 a limited partnership or an other business entity pursuant to the
18 laws of this state or of the state or place in which the limited
19 partnership or other business entity was organized, and the laws
20 of the state or place of organization, including this state, of the
21 converting limited partnership or other converting entity provide
22 substantially that the conversion vests in the converted limited
23 partnership or other converted entity all the real property of the
24 converting limited partnership or other converting entity, the
25 filing for record in the office of the county recorder of any
26 county in this state in which any of the real property of the
27 converting limited partnership or other converting entity is
28 located of either of the following shall evidence record
29 ownership in the converted limited partnership or other converted
30 entity of all interest of the converting limited partnership or other
31 converting entity in and to the real property located in that
32 county:

33 (1) A certificate of conversion or statement of partnership
34 authority, a certificate of limited partnership, articles of
35 incorporation, or articles of organization complying with Section
36 15911.06, in the form prescribed and certified by the Secretary of
37 State.

38 (2) A copy of a certificate of conversion or a statement of
39 partnership authority, certificate of limited partnership, articles of
40 organization, articles of incorporation, or other certificate or

1 document evidencing the creation of a foreign other business
2 entity or foreign limited partnership by conversion, containing a
3 statement of conversion, certified by the Secretary of State or an
4 authorized public official of the state or place pursuant to the
5 laws of which the conversion is effected.

6 (b) A filed and, if appropriate, recorded certificate of
7 conversion or a statement of partnership authority, certificate of
8 limited partnership, articles of organization, articles or certificate
9 of incorporation, or other certificate evidencing the creation of a
10 foreign other business entity or foreign limited partnership by
11 conversion, containing a statement of conversion, filed pursuant
12 to subdivision (a) of Section 15911.06, stating the name of the
13 converting limited partnership or other converting entity in
14 whose name property was held before the conversion and the
15 name of the converted entity or converted limited partnership,
16 but not containing all of the other information required by
17 Section 15911.06, operates with respect to the entities named to
18 the extent provided in subdivision (a).

19 (c) Recording of a certificate of conversion, or a statement of
20 partnership authority, certificate of limited partnership, articles of
21 organization, articles of incorporation, or other certificate
22 evidencing the creation of another business entity or a limited
23 partnership by conversion, containing a statement of conversion,
24 in accordance with subdivision (a), shall create, in favor of bona
25 fide purchasers or encumbrances for value, a conclusive
26 presumption that the conversion was validly completed.

27 15911.08. (a) An other business entity or a foreign other
28 business entity or a foreign limited partnership may be converted
29 to a domestic limited partnership pursuant to this article only if
30 the converting entity is authorized by the laws under which it is
31 organized to effect the conversion.

32 (b) An other business entity or a foreign other business entity
33 or a foreign limited partnership that desires to convert into a
34 domestic limited partnership shall approve a plan of conversion
35 or another instrument as is required to be approved to effect the
36 conversion pursuant to the laws under which that entity is
37 organized.

38 (c) The conversion of an other business entity or a foreign
39 other business entity or a foreign limited partnership into a
40 domestic limited partnership shall be approved by the number or

1 percentage of the partners, members, shareholders, or holders of
2 interest of the converting entity as is required by the laws under
3 which that entity is organized, or a greater or lesser percentage,
4 subject to applicable laws, as set forth in the converting entity's
5 partnership agreement, articles of organization, operating
6 agreement, articles or certificate of incorporation, or other
7 governing document.

8 (d) The conversion by an other business entity or a foreign
9 other business entity or a foreign limited partnership into a
10 domestic limited partnership shall be effective under this article
11 at the time the conversion is effective under the laws under which
12 the converting entity is organized, as long as a certificate of
13 limited partnership containing a statement of conversion has been
14 filed with the Secretary of State. If the converting entity's
15 governing law is silent as to the effectiveness of the conversion,
16 the conversion shall be effective upon the completion of all acts
17 required under this title to form a limited partnership.

18 (e) The filing with the Secretary of State of a certificate of
19 conversion or a certificate of limited partnership containing a
20 statement of conversion pursuant to subdivision (a) shall have the
21 effect of the filing of a certificate of cancellation by the
22 converting foreign limited partnership or foreign limited liability
23 company and no converting foreign limited partnership or
24 foreign limited liability company that has made the filing is
25 required to file a certificate of cancellation under Section
26 15902.03 or 17455 as a result of that conversion. If a converting
27 other business entity is a foreign corporation qualified to transact
28 business in this state, the foreign corporation shall, by virtue of
29 the filing, automatically surrender its right to transact intrastate
30 business.

31 15911.09. (a) An entity that converts into another entity
32 pursuant to this article is, for all purposes, other than for the
33 purposes of Part 10 (commencing with Section 17001) of, Part
34 10.20 (commencing with Section 18401) of, and Part 11
35 (commencing with Section 23001) of, Division 2 of the Revenue
36 and Taxation Code, the same entity that existed before the
37 conversion and the conversion shall not be deemed a transfer of
38 property.

39 (b) Upon a conversion taking effect, all of the following apply:

1 (1) All the rights and property, whether real, personal, or
2 mixed, of the converting entity or converting limited partnership
3 are vested in the converted entity or converted limited
4 partnership.

5 (2) All debts, liabilities, and obligations of the converting
6 entity or converting limited partnership continue as debts,
7 liabilities, and obligations of the converted entity or converted
8 limited partnership.

9 (3) All rights of creditors and liens upon the property of the
10 converting entity or converting limited partnership shall be
11 preserved unimpaired and remain enforceable against the
12 converted entity or converted limited partnership to the same
13 extent as against the converting entity or converting limited
14 partnership as if the conversion had not occurred.

15 (4) Any action or proceeding pending by or against the
16 converting entity or converting limited partnership may be
17 continued against the converted entity or converted limited
18 partnership as if the conversion had not occurred.

19 (c) A partner of a converting limited partnership is liable for
20 the following:

21 (1) All obligations of the converting limited partnership for
22 which the partner was personally liable before the conversion.

23 (2) All obligations of the converted entity incurred after the
24 conversion takes effect, but those obligations may be satisfied
25 only out of property of the entity if that partner is a limited
26 partner or a shareholder in a corporation, or unless expressly
27 provided otherwise in the articles of organization or other
28 governing documents, a member of a limited liability company,
29 or a holder of equity securities in another converted entity if the
30 holders of equity securities in that entity are not personally liable
31 for the obligations of that entity under the law under which the
32 entity is organized or its governing documents.

33 (d) A partner of a converted limited partnership remains liable
34 for any and all obligations of the converting entity for which the
35 partner was personally liable before the conversion, but only to
36 the extent that the partner was liable for the obligations of the
37 converting entity prior to the conversion.

38 (e) If the other party to a transaction with the limited
39 partnership reasonably believes when entering the transaction
40 that the limited partner is a general partner, the limited partner is

1 liable for an obligation incurred by the limited partnership within
2 90 days after the conversion takes effect. The limited partner's
3 liability for all other obligations of the limited partnership
4 incurred after the conversion takes effect is that of a limited
5 partner.

6 15911.10. Mergers of limited partnerships shall be governed
7 by Sections 15911.11 to 15911.19, inclusive.

8 15911.11. The following entities may be merged pursuant to
9 this article:

10 (a) Two or more limited partnerships into one limited
11 partnership.

12 (b) One or more limited partnerships and one or more other
13 business entities into one of those other business entities.

14 (c) One or more limited partnerships and one or more other
15 business entities into one limited partnership. Notwithstanding
16 this section, the merger of any number of limited partnerships
17 with any number of other business entities may be effected only
18 if the other business entities that are organized in California are
19 authorized by the laws under which they are organized to effect
20 the merger, and (1) if a limited partnership is the surviving
21 limited partnership, the foreign other business entities are not
22 prohibited by the laws under which they are organized from
23 effecting that merger, and (2) if a foreign limited partnership or
24 foreign other business entity is the survivor of the merger, the
25 laws of the jurisdiction under which the survivor is organized
26 authorize that merger. Notwithstanding the first sentence of this
27 paragraph, if one or more domestic corporations is also a party to
28 the merger described in that sentence, the merger may be effected
29 only if, with respect to any foreign other business entity that is a
30 corporation, the foreign corporation is authorized by the laws
31 under which it is organized to effect that merger.

32 15911.12. (a) Each limited partnership and other business
33 entity that desires to merge shall approve an agreement of
34 merger. The agreement of merger shall be approved by all
35 general partners of each constituent limited partnership and the
36 principal terms of the merger shall be approved by a majority in
37 interest of each class of limited partners of each constituent
38 limited partnership, unless a greater approval is required by the
39 partnership agreement of the constituent limited partnership.
40 Notwithstanding the previous sentence, if the limited partners of

1 any constituent limited partnership become personally liable for
2 any obligations of a constituent limited partnership or constituent
3 other business entity as a result of the merger, the principal terms
4 of the agreement of merger shall be approved by all of the
5 limited partners of the constituent limited partnership, unless the
6 agreement of merger provides that all limited partners will have
7 the dissenters' rights provided in Article 11.5 (commencing with
8 Section 15911.20). The agreement of merger shall be approved
9 on behalf of each constituent other business entity by those
10 persons required to approve the merger by the laws under which
11 it is organized. Other persons, including a parent of a constituent
12 limited partnership, may be parties to the agreement of merger.

13 The agreement of merger shall state:

14 (1) The terms and conditions of the merger.

15 (2) The name and place of organization of the surviving
16 limited partnership or surviving other business entity, and of each
17 disappearing limited partnership and disappearing other business
18 entity, and the agreement of merger may change the name of the
19 surviving limited partnership, which new name may be the same
20 as or similar to the name of a disappearing domestic or foreign
21 limited partnership, subject to Section 15901.08.

22 (3) The manner of converting the partnership interests of each
23 of the constituent limited partnerships into interests, shares, or
24 other securities of the surviving limited partnership or surviving
25 other business entity, and if partnership interests of any of the
26 constituent limited partnerships are not to be converted solely
27 into interests, shares, or other securities of the surviving limited
28 partnership or surviving other business entity, the cash, property,
29 rights, interests, or securities that the holders of the partnership
30 interests are to receive in exchange for the partnership interests,
31 which cash, property, rights, interests, or securities may be in
32 addition to or in lieu of interests, shares, or other securities of the
33 surviving limited partnership or surviving other business entity,
34 or that the partnership interests are canceled without
35 consideration.

36 (4) Any other details or provisions that are required by the
37 laws under which any constituent other business entity is
38 organized, including, if a domestic corporation is a party to the
39 merger, subdivision (b) of Section 1113.

1 (5) Any other details or provisions that are desired, including,
2 without limitation, a provision for the treatment of fractional
3 partnership interests.

4 (b) Each limited partnership interest of the same class of any
5 constituent limited partnership, other than a limited partnership
6 interest in another constituent limited partnership that is being
7 canceled and that is held by a constituent limited partnership or
8 its parent or a limited partnership of which the constituent limited
9 partnership is a parent, shall, unless all limited partners of the
10 class consent, be treated equally with respect to any distribution
11 of cash, property, rights, interests, or securities. Notwithstanding
12 this subdivision, except in a merger of a limited partnership with
13 a limited partnership in which it controls at least 90 percent of
14 the limited partnership interests entitled to vote with respect to
15 the merger, the unredeemable limited partnership interests of a
16 constituent limited partnership may be converted only into
17 unredeemable interests or securities of the surviving limited
18 partnership or other business entity or a parent if a constituent
19 limited partnership or a constituent other business entity or its
20 parent owns, directly or indirectly, prior to the merger, limited
21 partnership interests of another constituent limited partnership or
22 interests or securities of a constituent other business entity
23 representing more than 50 percent of the interests or securities
24 entitled to vote with respect to the merger of the other constituent
25 limited partnership or constituent other business entity or more
26 than 50 percent of the voting power, as defined in Section 194.5,
27 of a constituent other business entity that is a domestic
28 corporation, unless all of the limited partners of the class consent.
29 This subdivision shall apply only to constituent limited
30 partnerships with over 35 limited partners.

31 (c) Notwithstanding its prior approval, an agreement of merger
32 may be amended prior to the filing of the certificate of merger or
33 the agreement of merger, as provided in Section 15911.14, if the
34 amendment is approved by the general partners of each
35 constituent limited partnership in the same manner as required
36 for approval of the original agreement of merger and, if the
37 amendment changes any of the principal terms of the agreement
38 of merger, the amendment is approved by the limited partners of
39 each constituent limited partnership in the same manner and to
40 the same extent as required for the approval of the original

1 agreement of merger, and by each of the constituent other
2 business entities.

3 (d) The general partners of a constituent limited partnership
4 may, in their discretion, abandon a merger, subject to the
5 contractual rights, if any, of third parties, including other
6 constituent limited partnerships and constituent other business
7 entities, without further approval by the limited partnership
8 interests, at any time before the merger is effective.

9 (e) An agreement of merger approved in accordance with
10 subdivision (a) may (1) effect any amendment to the partnership
11 agreement of any constituent limited partnership or (2) effect the
12 adoption of a new partnership agreement for a constituent limited
13 partnership if it is the surviving limited partnership in the merger.
14 Any amendment to a partnership agreement or adoption of a new
15 partnership agreement made pursuant to the foregoing sentence
16 shall be effective at the effective time or date of the merger.
17 Notwithstanding the above provisions of this subdivision, if a
18 greater number of limited partners is required to approve an
19 amendment to the partnership agreement of a constituent limited
20 partnership than is required to approve the agreement of merger
21 pursuant to subdivision (a), and the number of limited partners
22 that approve the agreement of merger is less than the number of
23 limited partners required to approve an amendment to the
24 partnership agreement of the constituent limited partnership, any
25 amendment to the partnership agreement or adoption of a new
26 partnership agreement of that constituent limited partnership
27 made pursuant to the first sentence of this subdivision shall be
28 effective only if the agreement of merger provides that all of the
29 limited partners shall have the dissenters' rights provided in
30 Article 7.6 (commencing with Section 15911.20).

31 (f) The surviving limited partnership or surviving other
32 business entity shall keep the agreement of merger at its
33 designated office or at the business address specified in
34 paragraph (5) of subdivision (a) of Section 15911.14, as
35 applicable, and, upon the request of a limited partner of a
36 constituent limited partnership or a holder of shares, interests, or
37 other securities of a constituent other business entity, the general
38 partners of the surviving limited partnership or the authorized
39 person of the surviving other business entity shall promptly
40 deliver to the limited partner or the holder of shares, interests, or

1 other securities, at the expense of the surviving limited
2 partnership or surviving other business entity, a copy of the
3 agreement of merger. A waiver by a partner or holder of shares,
4 interests, or other securities of the rights provided in this
5 subdivision shall be unenforceable.

6 15911.13. Subdivision (b) of Section 15911.12 shall not
7 apply to any transaction if the commissioner has approved the
8 terms and conditions of the transaction and the fairness of such
9 terms and conditions pursuant to Section 25142.

10 15911.14. (a) If the surviving entity is a limited partnership
11 or an other business entity, other than a corporation in a merger
12 in which a domestic corporation is a constituent party, after
13 approval of a merger by the constituent limited partnerships and
14 any constituent other business entities, the constituent limited
15 partnerships and constituent other business entities shall file a
16 certificate of merger in the office of, and on a form prescribed
17 by, the Secretary of State. The certificate of merger shall be
18 executed and acknowledged by each domestic constituent limited
19 partnership by all general partners, unless a lesser number is
20 provided in the certificate of limited partnership of the domestic
21 constituent limited partnership, and by each foreign constituent
22 limited partnership by one or more general partners, and by each
23 constituent other business entity by those persons required to
24 execute the certificate of merger by the laws under which the
25 constituent other business entity is organized. The certificate of
26 merger shall set forth all of the following:

27 (1) The names and the Secretary of State's file numbers, if
28 any, of each of the constituent limited partnerships and
29 constituent other business entities, separately identifying the
30 disappearing limited partnerships and disappearing other
31 business entities and the surviving limited partnership or
32 surviving other business entity.

33 (2) If a vote of the limited partners was required under Section
34 15911.12, a statement setting forth the total number of
35 outstanding interests of each class entitled to vote on the merger
36 and that the principal terms of the agreement of merger were
37 approved by a vote of the number of interests of each class which
38 equaled or exceeded the vote required, specifying each class
39 entitled to vote and the percentage vote required of each class.

1 (3) If the surviving entity is a limited partnership and not an
2 other business entity, any change required to the information set
3 forth in the certificate of limited partnership of the surviving
4 limited partnership resulting from the merger, including any
5 change in the name of the surviving limited partnership resulting
6 from the merger. The filing of a certificate of merger setting forth
7 any such changes to the certificate of limited partnership of the
8 surviving limited partnership shall have the effect of the filing of
9 a certificate of amendment by the surviving limited partnership,
10 and the surviving limited partnership need not file a certificate of
11 amendment under Section 15902.02 to reflect those changes.

12 (4) The future effective date or time, which shall be a date or
13 time certain not more than 90 days subsequent to the date of
14 filing, of the merger, if the merger is not to be effective upon the
15 filing of the certificate of merger with the office of the Secretary
16 of State.

17 (5) If the surviving entity is an other business entity or a
18 foreign limited partnership, the full name of the entity, type of
19 entity, legal jurisdiction in which the entity was organized and by
20 whose laws its internal affairs are governed, and the address of
21 the principal place of business of the entity.

22 (6) Any other information required to be stated in the
23 certificate of merger by the laws under which each constituent
24 other business entity is organized, including, if a domestic
25 corporation is a party to the merger, paragraph (2) of subdivision
26 (g) of Section 1113. If the surviving entity is a foreign limited
27 partnership in a merger in which a domestic corporation is a
28 disappearing other business entity, a copy of the agreement of
29 merger and attachments as required under paragraph (1) of
30 subdivision (g) of Section 1113 shall be filed at the same time as
31 the filing of the certificate of merger.

32 (b) If the surviving entity is a domestic corporation or a
33 foreign corporation in a merger in which a domestic corporation
34 is a constituent party, after approval of the merger by the
35 constituent limited partnerships and constituent other business
36 entities, the surviving corporation shall file in the office of the
37 Secretary of State a copy of the agreement of merger and
38 attachments required under paragraph (1) of subdivision (g) of
39 Section 1113. The certificate of merger shall be executed and
40 acknowledged by each domestic constituent limited partnership

1 by all general partners, unless a lesser number is provided in the
2 certificate of limited partnership of the domestic constituent
3 limited partnership.

4 (c) A certificate of merger or the agreement of merger, as is
5 applicable under subdivision (a) or (b), shall have the effect of
6 the filing of a certificate of cancellation for each disappearing
7 limited partnership, and no disappearing limited partnership need
8 file a certificate of cancellation under Section 15902.03 as a
9 result of the merger.

10 (d) If the organization disappearing into the other business
11 entity is a foreign corporation qualified to transact intrastate
12 business in this state, a certificate of satisfaction of the Franchise
13 Tax Board as required by Section 23334 of the Revenue and
14 Taxation Code shall be filed with the certificate of merger or
15 agreement of merger, as is applicable under subdivision (a) or
16 (b). By the filing of the certificate of merger or agreement of
17 merger, as is applicable, the foreign corporation shall
18 automatically surrender its right to transact intrastate business.

19 15911.15. (a) Unless a future effective date or time is
20 provided in a certificate of merger or the agreement of merger, if
21 an agreement of merger is required to be filed under Section
22 15911.14, in which event the merger shall be effective at that
23 future effective date or time, a merger shall be effective upon the
24 filing of the certificate of merger or the agreement of merger, as
25 is applicable, in the office of the Secretary of State.

26 (b) (1) For all purposes, a copy of the certificate of merger
27 duly certified by the Secretary of State is conclusive evidence of
28 the merger of (A) the constituent limited partnerships, either by
29 themselves or together with constituent other business entities,
30 into the surviving other business entity, or (B) the constituent
31 limited partnerships or the constituent other business entities, or
32 both, into the surviving limited partnership.

33 (2) In a merger in which the surviving entity is a corporation
34 in a merger in which a domestic corporation and a domestic
35 limited partnership are parties to the merger, a copy of an
36 agreement of merger certified on or after the effective date by an
37 official having custody thereof has the same force in evidence as
38 the original and, except as against the state, is conclusive
39 evidence of the performance of all conditions precedent to the
40 merger, the existence on the effective date of the surviving

1 corporation, and the performance of the conditions necessary to
2 the adoption of any amendment to the articles of incorporation of
3 the surviving corporation, if applicable, contained in the
4 agreement of merger.

5 15911.16. (a) Upon a merger of limited partnerships or
6 limited partnerships and other business entities pursuant to this
7 chapter, the separate existence of the disappearing limited
8 partnerships and disappearing other business entities ceases and
9 the surviving limited partnership or surviving other business
10 entity shall succeed, without other transfer, act or deed, to all the
11 rights and property, whether real, personal, or mixed, of each of
12 the disappearing limited partnerships and disappearing other
13 business entities, and shall be subject to all the debts and
14 liabilities of each in the same manner as if the surviving limited
15 partnership or surviving other business entity had itself incurred
16 them.

17 (b) All rights of creditors and all liens upon the property of
18 each of the constituent limited partnerships and constituent other
19 business entities shall be preserved unimpaired and may be
20 enforced against the surviving limited partnership or the
21 surviving other business entity to the same extent as if the debt,
22 liability, or duty which gave rise to that lien had been incurred or
23 contracted by the surviving limited partnership or the surviving
24 other business entity, provided that such liens upon the property
25 of a disappearing limited partnership or disappearing other
26 business entity shall be limited to the property affected thereby
27 immediately prior to the time the merger is effective.

28 (c) Any action or proceeding pending by or against any
29 disappearing limited partnership or disappearing other business
30 entity may be prosecuted to judgment, which shall bind the
31 surviving limited partnership or surviving other business entity,
32 or the surviving limited partnership or surviving other business
33 entity may be proceeded against or be substituted in the place of
34 the disappearing limited partnership or disappearing other
35 business entity.

36 (d) Nothing in this article is intended to affect the liability a
37 general partner of a disappearing limited partnership may have in
38 connection with the debts and liabilities of the disappearing
39 limited partnership existing prior to the time the merger is
40 effective.

1 15911.17. (a) The merger of any number of domestic limited
2 partnerships with any number of foreign limited partnerships or
3 foreign other business entities shall be required to comply with
4 Section 15911.10.

5 (b) If the surviving entity is a domestic limited partnership or
6 a domestic other business entity, the merger proceedings with
7 respect to that limited partnership or other business entity and
8 any domestic disappearing limited partnership shall conform to
9 the provisions of this chapter governing the merger of domestic
10 limited partnerships, but if the surviving entity is a foreign
11 limited partnership or a foreign other business entity, then,
12 subject to the requirements of subdivision (d) and Article 11.5
13 (commencing with Section 15911.20) and, with respect to any
14 domestic constituent corporation, Section 1113 and Chapters 12
15 (commencing with Section 1200) and 13 (commencing with
16 Section 1300) of Division 1 of Title 1, the merger proceedings
17 may be in accordance with the laws of the state or place of
18 organization of the surviving limited partnership or surviving
19 other business entity.

20 (c) If the surviving entity is a domestic limited partnership or
21 domestic other business entity, other than a domestic corporation,
22 the certificate of merger shall be filed as provided in subdivision
23 (a) of Section 15911.14, and thereupon, subject to subdivision (a)
24 of Section 15911.15, the merger shall be effective as to each
25 domestic constituent limited partnership and domestic constituent
26 other business entity. If the surviving entity is a domestic
27 corporation, the agreement of merger with attachments shall be
28 filed as provided in subdivision (b) of Section 15911.14, and
29 thereupon, subject to subdivision (a) of Section 15911.15, the
30 merger shall be effective as to each domestic constituent limited
31 partnership and domestic constituent other business entity unless
32 another effective date is provided in Chapter 11 (commencing
33 with Section 1100) of Division 1 of Title 1, with respect to any
34 constituent corporation or constituent limited partnership.

35 (d) If the surviving entity is a foreign limited partnership or
36 foreign other business entity, the merger shall become effective
37 in accordance with the law of the jurisdiction in which the
38 surviving limited partnership or surviving other business entity is
39 organized, but shall be effective as to any domestic disappearing
40 limited partnership as of the time of effectiveness in the foreign

1 jurisdiction upon the filing in this state of a certificate of merger
2 or agreement of merger as provided in Section 15911.14.

3 (e) If a merger described in subdivision (c) or (d) also includes
4 a foreign disappearing limited partnership previously registered
5 for the transaction of intrastate business in this state pursuant to
6 Section 15909.02, the filing of the certificate of merger or
7 agreement of merger, as is applicable under Section 15911.14,
8 automatically has the effect of a cancellation of registration for
9 that foreign limited partnership pursuant to Section 15909.06
10 without the necessity of the filing of a certificate of cancellation.

11 (f) The provisions of subdivision (b) of Section 15911.12 and
12 Article 11.5 (commencing with Section 15911.20) apply to the
13 rights of the limited partners of any of the constituent limited
14 partnerships that are domestic limited partnerships and of any
15 domestic limited partnership that is a parent of any foreign
16 constituent limited partnership.

17 15911.18. Whenever a domestic or foreign limited
18 partnership or other business entity having any real property in
19 this state merges with another limited partnership or other
20 business entity pursuant to the laws of this state or of the state or
21 place in which any constituent limited partnership or constituent
22 other business entity was organized, and the laws of the state or
23 place of organization, including this state, of any disappearing
24 limited partnership or disappearing other business entity provide
25 substantially that the making and filing of the agreement of
26 merger or certificate of merger vests in the surviving limited
27 partnership or surviving other business entity all the real property
28 of any disappearing limited partnership and disappearing other
29 business entity, the filing for record in the office of the county
30 recorder of any county in this state in which any of the real
31 property of the disappearing limited partnership or disappearing
32 other business entity is located of either of the following shall
33 evidence record ownership in the surviving limited partnership or
34 surviving other business entity of all interest of such disappearing
35 limited partnership or disappearing other business entity in and to
36 the real property located in that county:

37 (a) A certificate of merger certified by the Secretary of State,
38 or other certificate prescribed by the Secretary of State.

39 (b) A copy of the agreement of merger or certificate of merger,
40 certified by the Secretary of State or an authorized public official

1 of the state or place pursuant to the laws of which the merger is
2 effected.

3 15911.19. Recording of the certificate of merger in accordance
4 with Section 15911.18 shall create, in favor of bona fide
5 purchasers or encumbrancers for value, a conclusive presumption
6 that the merger was validly completed.

7
8 Article 11.5 Dissenting Limited Partners' Rights
9

10 15911.20. (a) For purposes of this article, "reorganization"
11 refers to any of the following:

12 (1) A conversion pursuant to Article 11 (commencing with
13 Section 15911.01).

14 (2) A merger pursuant to Article 11 (commencing with
15 Section 15911.10).

16 (3) The acquisition by one limited partnership in exchange, in
17 whole or in part, for its partnership interests (or the partnership
18 interests or equity securities of a partnership or other business
19 entity that is in control of the acquiring limited partnership) of
20 partnership interests or equity securities of another limited
21 partnership or other business entity if, immediately after the
22 acquisition, the acquiring limited partnership has control of the
23 other limited partnership or other business entity.

24 (4) The acquisition by one limited partnership in exchange in
25 whole or in part for its partnership interests (or the partnership
26 interests or equity securities of a partnership or other business
27 entity which is in control of the acquiring limited partnership) or
28 for its debts securities (or debt securities of a limited partnership
29 or other business entity which is in control of the acquiring
30 limited partnership) which are not adequately secured and which
31 have a maturity date in excess of five years after the
32 consummation of the acquisition, or both, of all or substantially
33 all of the assets of another limited partnership or other business
34 entity.

35 (b) For purposes of this article, "control" means the
36 possession, direct or indirect, of the power to direct or cause the
37 direction of the management and policies of a limited partnership
38 or other business entity.

39 15911.21. (a) If the approval of outstanding limited
40 partnership interests is required for a limited partnership to

1 participate in a reorganization, pursuant to the limited partnership
2 agreement of the partnership, or otherwise, then each limited
3 partner of the limited partnership holding those interests may, by
4 complying with this article, require the limited partnership to
5 purchase for cash, at its fair market value, the interest owned by
6 the limited partner in the limited partnership, if the interest is a
7 dissenting interest as defined in subdivision (b). The fair market
8 value shall be determined as of the day before the first
9 announcement of the terms of the proposed reorganization,
10 excluding any appreciation or depreciation in consequence of the
11 proposed reorganization.

12 (b) As used in this article, “dissenting interest” means the
13 interest of a limited partner that satisfies all of the following
14 conditions:

15 (1) Either:

16 (A) Was not, immediately prior to the reorganization, either (i)
17 listed on any national securities exchange certified by the
18 Commissioner of Corporations under subdivision (o) of Section
19 25100, or (ii) listed on the list of OTC margin stocks issued by
20 the Board of Governors of the Federal Reserve System, provided
21 that in either such instance the limited partnership whose
22 outstanding interests are so listed provides, in its notice to limited
23 partners requesting their approval of the proposed reorganization,
24 a summary of the provisions of this section and Sections
25 15911.22, 15911.23, 15911.24, and 15911.25.

26 (B) If the interest is of a class of interests listed as described in
27 clause (i) or (ii) of subparagraph (A), demands for payment are
28 filed with respect to 5 percent or more of the outstanding
29 interests of that class.

30 (2) Was outstanding on the date for the determination of
31 limited partners entitled to vote on the reorganization.

32 (3) (A) Was not voted in favor of the reorganization, or (B) if
33 the interest is described in clause (i) or (ii) of subparagraph (A)
34 of paragraph (1), was voted against the reorganization; provided,
35 however, that clause (A) rather than clause (B) of this paragraph
36 applies in any event where the approval for the proposed
37 reorganization is sought by written consent rather than at a
38 meeting.

1 (4) The limited partner has demanded that it be purchased by
2 the limited partnership at its fair market value in accordance with
3 Section 15911.22.

4 (5) The limited partner has submitted it for endorsement, if
5 applicable, in accordance with Section 15911.23.

6 (c) As used in this article, “dissenting limited partner” means
7 the recordholder of a dissenting interest, and includes an assignee
8 of record of such an interest.

9 15911.22. (a) If limited partners have a right under Section
10 15911.21, subject to compliance with paragraphs (4) and (5) of
11 subdivision (b) thereof, to require the limited partnership to
12 purchase their limited partnership interests for cash, such limited
13 partnership shall mail to each such limited partner a notice of the
14 approval of the reorganization by the requisite vote or consent of
15 the limited partners, within 10 days after the date of such
16 approval, accompanied by a copy of this section and Sections
17 15911.21, 15911.23, 15911.24, and 15911.25, a statement of the
18 price determined by the limited partnership to represent the fair
19 market value of its outstanding interests, and a brief description
20 of the procedure to be followed if the limited partner desires to
21 exercise the limited partner’s rights under such sections. The
22 statement of price constitutes an offer by the limited partnership
23 to purchase at the price stated any dissenting interests as defined
24 in subdivision (b) of Section 15911.21, unless they lose their
25 status as dissenting interests under Section 15911.30.

26 (b) Any limited partner who has a right to require the limited
27 partnership to purchase the limited partner’s interest for cash
28 under Section 15911.21, subject to compliance with paragraphs
29 (4) and (5) of subdivision (b) thereof, and who desires the limited
30 partnership to purchase such interest, shall make written demand
31 upon the limited partnership for the purchase of such interest and
32 the payment to the limited partner in cash of its fair market value.
33 The demand is not effective for any purpose unless it is received
34 by the limited partnership or any transfer agent thereof (1) in the
35 case of interests described in clause (i) or (ii) of subparagraph
36 (A) of paragraph (1) of subdivision (b) of Section 15911.21, not
37 later than the date of the limited partners’ meeting to vote upon
38 the reorganization, or (2) in any other case, within 30 days after
39 the date on which notice of the approval of the reorganization by

1 the requisite vote or consent of the limited partners is mailed by
2 the limited partnership to the limited partners.

3 (c) The demand shall state the number or amount of the
4 limited partner's interest in the limited partnership and shall
5 contain a statement of what such limited partner claims to be the
6 fair market value of that interest on the day before the
7 announcement of the proposed reorganization. The statement of
8 fair market value constitutes an offer by the limited partner to sell
9 the interest at such price.

10 15911.23. Within 30 days after the date on which notice of
11 the approval of the outstanding interests of the limited
12 partnership is mailed to the limited partner pursuant to
13 subdivision (a) of Section 15911.22, the limited partner shall
14 submit to the limited partnership at its principal office or at the
15 office of any transfer agent thereof, (a) if the interest is evidenced
16 by a certificate, the limited partner's certificate representing the
17 interest which the limited partner demands that the limited
18 partnership purchase, to be stamped or endorsed with a statement
19 that the interest is a dissenting interest or to be exchanged for
20 certificates of appropriate denominations so stamped or
21 endorsed, or (b) if the interest is not evidenced by a certificate,
22 written notice of the number or amount of interest which the
23 limited partner demands that the limited partnership purchase.
24 Upon subsequent transfers of the dissenting interest on the books
25 of the limited partnership, the new certificates or other written
26 statement issued therefor shall bear a like statement, together
27 with the name of the original holder of the dissenting interest.

28 15911.24. (a) If the limited partnership and the dissenting
29 limited partner agree that such limited partner's interest is a
30 dissenting interest and agree upon the price to be paid for the
31 dissenting interest, the dissenting limited partner is entitled to the
32 agreed price with interest thereon at the legal rate on judgments
33 from the date of consummation of the reorganization. All
34 agreements fixing the fair market value of any dissenting limited
35 partner's interest as between the limited partnership and such
36 limited partner shall be in writing and filed in the records of the
37 limited partnership.

38 (b) Subject to the provisions of Section 15911.27, payment of
39 the fair market value for a dissenting interest shall be made
40 within 30 days after the amount thereof has been agreed to or

1 within 30 days after any statutory or contractual conditions to the
2 reorganization are satisfied, whichever is later, and in the case of
3 dissenting interests evidenced by certificates of interest, subject
4 to surrender of such certificates of interest, unless provided
5 otherwise by agreement.

6 15911.25. (a) If the limited partnership denies that a limited
7 partnership interest is a dissenting interest, or the limited
8 partnership and a dissenting limited partner fail to agree upon the
9 fair market value of a dissenting interest, then such limited
10 partner or any interested limited partnership, within six months
11 after the date on which notice of the approval of the
12 reorganization by the requisite vote or consent of the limited
13 partners was mailed to the limited partner, but not thereafter, may
14 file a complaint in the superior court of the proper county praying
15 the court to determine whether the interest is a dissenting interest,
16 or the fair market value of the dissenting interest, or both, or may
17 intervene in any action pending on such a complaint.

18 (b) Two or more dissenting limited partners may join as
19 plaintiffs or be joined as defendants in any such action and two
20 or more such actions may be consolidated.

21 (c) On the trial of the action, the court shall determine the
22 issues. If the status of the limited partnership interest as a
23 dissenting interest is in issue, the court shall first determine that
24 issue. If the fair market value of the dissenting interest is in issue,
25 the court shall determine, or shall appoint one or more impartial
26 appraisers to determine, the fair market value of the dissenting
27 interest.

28 15911.26. (a) If the court appoints an appraiser or appraisers,
29 they shall proceed forthwith to determine the fair market value
30 per interest of the outstanding limited partnership interests of the
31 limited partnership, by class if necessary. Within the time fixed
32 by the court, the appraisers, or a majority of them, shall make and
33 file a report in the office of the clerk of the court. Thereupon, on
34 the motion of any party, the report shall be submitted to the court
35 and considered on such additional evidence as the court considers
36 relevant. If the court finds the report reasonable, the court may
37 confirm it.

38 (b) If a majority of the appraisers appointed fails to make and
39 file a report within 30 days from the date of their appointment, or
40 within such further time as may be allowed by the court, or the

1 report is not confirmed by the court, the court shall determine the
2 fair market value per interest of the outstanding limited
3 partnership interests of the limited partnership, by class if
4 necessary.

5 (c) Subject to Section 15911.27, judgment shall be rendered
6 against the limited partnership for payment of an amount equal to
7 the fair market value, as determined by the court, of each
8 dissenting interest which any dissenting limited partner who is a
9 party, or has intervened, is entitled to require the limited
10 partnership to purchase, with interest thereon at the legal rate on
11 judgments from the date of consummation of the reorganization.

12 (d) Any such judgment shall be payable forthwith, provided,
13 however, that with respect to limited partnership interests
14 evidenced by transferable certificates of interest, only upon the
15 endorsement and delivery to the limited partnership of those
16 certificates representing the interests described in the judgment.
17 Any party may appeal from the judgment.

18 (e) The costs of the action, including reasonable compensation
19 for the appraisers, to be fixed by the court, shall be assessed or
20 apportioned as the court considers equitable, but, if the appraisal
21 exceeds the price offered by the limited partnership, the limited
22 partnership shall pay the costs (including, in the discretion of the
23 court, if the value awarded by the court for the dissenting interest
24 is more than 125 percent of the price offered by the limited
25 partnership under subdivision (a) of Section 15912.03, attorneys'
26 fees and fees of expert witnesses).

27 15911.27. To the extent that the payment to dissenting limited
28 partners of the fair market value of their dissenting interests
29 would require the dissenting limited partners to return such
30 payment or a portion thereof by reason of Section 15905.09 or
31 the Uniform Fraudulent Transfer Act (Chapter 1 (commencing
32 with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil
33 Code), then that payment or portion thereof shall not be made
34 and the dissenting limited partners shall become creditors of the
35 limited partnership for the amount not paid, together with interest
36 thereon at the legal rate on judgments until the date of payment,
37 but subordinate to all other creditors in any proceeding relating to
38 the winding up and dissolution of the limited partnership, such
39 debt to be payable when permissible.

1 15911.28. Any cash distributions made by a limited
2 partnership to a dissenting limited partner after the date of
3 consummation of the reorganization, but prior to any payment by
4 the limited partnership for such dissenting limited partner's
5 interest, shall be credited against the total amount to be paid by
6 the limited partnership for such dissenting interest.

7 15911.29. Except as expressly limited by this article,
8 dissenting limited partners shall continue to have all the rights
9 and privileges incident to their interests immediately prior to the
10 reorganization, including limited liability, until payment by the
11 limited partnership for their dissenting interests. A dissenting
12 limited partner may not withdraw a demand for payment unless
13 the limited partnership consents thereto.

14 15911.30. A dissenting interest loses its status as a dissenting
15 interest and the holder thereof ceases to be a dissenting limited
16 partner and ceases to be entitled to require the limited partnership
17 to purchase the interest upon the happening of any of the
18 following:

19 (a) The limited partnership abandons the reorganization. Upon
20 abandonment of the reorganization, the limited partnership shall
21 pay, on demand, to any dissenting limited partner who has
22 initiated proceeding in good faith under this article, all
23 reasonable expenses incurred in such proceedings and reasonable
24 attorneys' fees.

25 (b) The interest is transferred prior to its submission for
26 endorsement in accordance with Section 15911.23.

27 (c) The dissenting limited partner and the limited partnership
28 do not agree upon the status of the interest as a dissenting interest
29 or upon the purchase price of the dissenting interest, and neither
30 files a complaint nor intervenes in a pending action, as provided
31 in Section 15911.25, within six months after the date upon which
32 notice of the approval of the reorganization by the requisite vote
33 or consent of limited partners was mailed to the limited partner.

34 (d) The dissenting limited partner, with the consent of the
35 limited partnership, withdraws such limited partner's demand for
36 purchase of the dissenting interest.

37 15911.31. If litigation is instituted to test the sufficient or
38 regularity of the vote or consent of the limited partners in
39 authorizing a reorganization, any proceedings under Sections

1 15911.25 and 15911.26 shall be suspended until final
2 determination of that litigation.

3 15911.32. (a) This article applies to the following:

4 (1) A domestic limited partnership formed on or after January
5 1, 1991.

6 (2) A foreign limited partnership if (A) the foreign limited
7 partnership was formed on or after January 1, 1991, or filed an
8 application to qualify to do business on or after January 1, 1991,
9 and (B) limited partners holding more than 50 percent of the
10 voting power held by all limited partners of the foreign limited
11 partnership reside in this state.

12 (3) A limited partnership if the partnership agreement so
13 provides or if all general partners and a majority in interest of the
14 limited partners determine that this article shall apply.

15 (b) This article does not apply to limited partnership interests
16 governed by limited partnership agreements whose terms and
17 provisions specifically set forth the amount to be paid in respect
18 of such interests in the event of a reorganization of the limited
19 partnership, or to limited partnerships with 35 or fewer limited
20 partners, unless the partnership agreement provides that this
21 article shall apply or unless all general partners and a majority in
22 interest of the limited partners agree that this article shall apply.

23 15911.33. (a) No limited partner of a limited partnership who
24 has a right under this article to demand payment of cash for the
25 interest owned by such limited partner in a limited partnership
26 shall have any right at law or in equity to attack the validity of
27 the reorganization, or to have the reorganization set aside or
28 rescinded, except in an action to test whether the vote or consent
29 of limited partners required to authorize or approve the
30 reorganization has been obtained in accordance with the
31 procedures established therefor by the partnership agreement of
32 the limited partnership.

33 (b) If one of the parties to a reorganization is directly or
34 indirectly controlled by, or under common control with, another
35 party to the reorganization, subdivision (a) shall not apply to any
36 limited partner of such controlled party who has not demanded
37 payment of cash for such limited partner's interest pursuant to
38 this article; but if such limited partner institutes any action to
39 attack the validity of the reorganization or to have the
40 reorganization set aside or rescinded, the limited partner shall not

1 thereafter have any right to demand payment of cash for such
2 limited partner's interest pursuant to this article.

3 (c) If one of the parties to a reorganization is directly or
4 indirectly controlled by, or under common control with, another
5 party to the reorganization, then, in any action to attack the
6 validity of the reorganization or to have the reorganization set
7 aside or rescinded, (1) a party to a reorganization which controls
8 another party to a reorganization shall have the burden of proving
9 that the transaction is just and reasonable as to the limited
10 partners of the controlled party, and (2) a person who controls
11 two or more parties to a reorganization shall have the burden of
12 proving that the transaction is just and reasonable as to the
13 limited partners of any party so controlled.

14 (d) Subdivisions (b) and (c) shall not apply if a majority in
15 interest of the limited partners other than limited partners who
16 are directly or indirectly controlled by, or under common control
17 with, another party to the reorganization approve or consent to
18 the reorganization.

19 (e) This section shall not prevent a partner of a limited
20 partnership that is a party to a reorganization from bringing an
21 action against a general partner of the limited partnership, the
22 limited partnership, or any person controlling a general partner at
23 law or in equity as to any matters (including, without limitation,
24 an action for breach of fiduciary obligation or fraud) other than to
25 attack the validity of the reorganization or to have the
26 reorganization set aside or rescinded.

27
28 Article 12. Miscellaneous Provisions
29

30 15912.01. In applying and construing this chapter,
31 consideration must be given to the need to promote uniformity of
32 the law with respect to its subject matter among states that enact
33 it.

34 15912.02. If any provision of this chapter or its application to
35 any person or circumstance is held invalid, the invalidity does not
36 affect other provisions or applications of this chapter which can
37 be given effect without the invalid provision or application, and
38 to this end, the provisions of this chapter are severable.

39 15912.03. This chapter modifies, limits, or supersedes the
40 federal Electronic Signatures in Global and National Commerce

1 Act, 15 U.S.C. Section 7001 et seq., but this chapter does not
2 modify, limit, or supersede Section 101(c) of that act or authorize
3 electronic delivery of any of the notices described in Section
4 103(b) of that act.

5 15912.04. This chapter shall become operative on January 1,
6 2008.

7 15912.06. (a) Before January 1, 2010, this chapter governs
8 only:

9 (1) a limited partnership formed on or after January 1, 2008;
10 and

11 (2) except as otherwise provided in subdivisions (c) and (d), a
12 limited partnership formed before January 1, 2008, which elects,
13 in the manner provided in its partnership agreement or by law for
14 amending the partnership agreement, to be subject to this chapter.

15 (b) Except as otherwise provided in subdivision (c), on and
16 after January 1, 2010, this chapter governs all limited
17 partnerships.

18 (c) With respect to a limited partnership formed before
19 January 1, 2008, the following rules apply except as the partners
20 otherwise elect in the manner provided in the partnership
21 agreement or by law for amending the partnership agreement:

22 (1) Section 15901.04(c) does not apply and the limited
23 partnership has whatever duration it had under the law applicable
24 immediately before January 1, 2008.

25 (2) Sections 15906.01 and 15906.02 do not apply and a limited
26 partner has the same right and power to dissociate from the
27 limited partnership, with the same consequences, as existed
28 immediately before January 1, 2008.

29 (3) Subdivision (d) of Section 15906.03 does not apply.

30 (4) Subdivision (e) of Section 15906.03 does not apply and a
31 court has the same power to expel a general partner as the court
32 had immediately before January 1, 2008.

33 (5) Subdivision (c) of Section 15908.01 does not apply and the
34 connection between a person's dissociation as a general partner
35 and the dissolution of the limited partnership is the same as
36 existed immediately before January 1, 2008.

37 (d) With respect to a limited partnership that elects pursuant to
38 paragraph (2) of subdivision (a) to be subject to this chapter, after
39 the election takes effect, the provisions of this chapter relating to

1 the liability of the limited partnership's general partners to third
2 parties apply:

3 (1) before January 1, 2010, to:

4 (A) a third party that had not done business with the limited
5 partnership in the year before the election took effect; and

6 (B) a third party that had done business with the limited
7 partnership in the year before the election took effect only if the
8 third party knows or has received a notification of the election;
9 and

10 (2) on and after January 1, 2010, to all third parties, but those
11 provisions remain inapplicable to any obligation incurred while
12 those provisions were inapplicable under subparagraph (B) of
13 paragraph (1).

14 15912.07. This chapter does not affect an action commenced,
15 proceeding brought, or right accrued before this chapter becomes
16 operative.

17 SEC. 21. Section 16101 of the Corporations Code is amended
18 to read:

19 16101. As used in this chapter, the following terms and
20 phrases have the following meanings:

21 (1) "Business" includes every trade, occupation, and
22 profession.

23 (2) "Debtor in bankruptcy" means a person who is the subject
24 of either of the following:

25 (A) An order for relief under Title 11 of the United States
26 Code or a comparable order under a successor statute of general
27 application.

28 (B) A comparable order under federal, state, or foreign law
29 governing insolvency.

30 (3) "Distribution" means a transfer of money or other property
31 from a partnership to a partner in the partner's capacity as a
32 partner or to the partner's transferee.

33 (4) "Electronic transmission by the partnership" means a
34 communication (a) delivered by (1) facsimile telecommunication
35 or electronic mail when directed to the facsimile number or
36 electronic mail address, respectively, for that recipient on record
37 with the partnership, (2) posting on an electronic message board
38 or network that the partnership has designated for those
39 communications, together with a separate notice to the recipient
40 of the posting, which transmission shall be validly delivered

1 upon the later of the posting or delivery of the separate notice
2 thereof, or (3) other means of electronic communication, (b) to a
3 recipient who has provided an unrevoked consent to the use of
4 those means of transmission, and (c) that creates a record that is
5 capable of retention, retrieval, and review, and that may
6 thereafter be rendered into clearly legible tangible form.

7 However, an electronic transmission by a partnership to an
8 individual partner is not authorized unless, in addition to
9 satisfying the requirements of this section, the transmission
10 satisfies the requirements applicable to consumer consent to
11 electronic records as set forth in the Electronic Signatures in
12 Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

13 (5) “Electronic transmission to the partnership” means a
14 communication (a) delivered by (1) facsimile telecommunication
15 or electronic mail when directed to the facsimile number or
16 electronic mail address, respectively, which the partnership has
17 provided from time to time to partners for sending
18 communications to the partnership, (2) posting on an electronic
19 message board or network that the partnership has designated for
20 those communications, and which transmission shall be validly
21 delivered upon the posting, or (3) other means of electronic
22 communication, (b) as to which the partnership has placed in
23 effect reasonable measures to verify that the sender is the partner
24 (in person or by proxy) purporting to send the transmission, and
25 (c) that creates a record that is capable of retention, retrieval, and
26 review, and that may thereafter be rendered into clearly legible
27 tangible form.

28 (6) (A) “Foreign limited liability partnership” means a
29 partnership, other than a limited partnership, formed pursuant to
30 an agreement governed by the laws of another jurisdiction and
31 denominated or registered as a limited liability partnership or
32 registered limited liability partnership under the laws of that
33 jurisdiction (i) in which each partner is a licensed person or a
34 person licensed or authorized to provide professional limited
35 liability partnership services in a jurisdiction or jurisdictions
36 other than this state, (ii) which is licensed under the laws of the
37 state to engage in the practice of architecture, the practice of
38 public accountancy, or the practice of law, or (iii) which (I) is
39 related to a registered limited liability partnership that practices
40 public accountancy or, to the extent permitted by the State Bar,

1 practices law or is related to a foreign limited liability partnership
2 and (II) provides services related or complementary to the
3 professional limited liability partnership services provided by, or
4 provides services or facilities to, that registered limited liability
5 partnership or foreign limited liability partnership.

6 (B) For the purposes of clause (iii) of subparagraph (A), a
7 partnership is related to a registered limited liability partnership
8 or foreign limited liability partnership if (i) at least a majority of
9 the partners in one partnership are also partners in the other
10 partnership, or (ii) at least a majority in interest in each
11 partnership hold interests in or are members of another person,
12 except an individual, and each partnership renders services
13 pursuant to an agreement with that other person, or (iii) one
14 partnership, directly or indirectly through one or more
15 intermediaries, controls, is controlled by, or is under common
16 control with, the other partnership.

17 (7) “Licensed person” means any person who is duly licensed,
18 authorized, or registered under the provisions of the Business and
19 Professions Code to provide professional limited liability
20 partnership services or who is lawfully able to render
21 professional limited liability partnership services in this state.

22 (8) (A) “Registered limited liability partnership” means a
23 partnership, other than a limited partnership, formed pursuant to
24 an agreement governed by Article 10 (commencing with Section
25 16951), that is registered under Section 16953 and (i) each of the
26 partners of which is a licensed person or a person licensed or
27 authorized to provide professional limited liability partnership
28 services in a jurisdiction or jurisdictions other than this state, (ii)
29 is licensed under the laws of the state to engage in the practice of
30 architecture, practice of public accountancy, or the practice of
31 law, or (iii)(I) is related to a registered limited liability
32 partnership that practices public accountancy or, to the extent
33 permitted by the State Bar, practices law or is related to a foreign
34 limited liability partnership and (II) provides services related or
35 complementary to the professional limited liability partnership
36 services provided by, or provides services or facilities to, that
37 registered limited liability partnership or foreign limited liability
38 partnership.

39 (B) For the purposes of clause (iii) of subparagraph (A), a
40 partnership is related to a registered limited liability partnership

1 or foreign limited liability partnership if (i) at least a majority of
2 the partners in one partnership are also partners in the other
3 partnership, or (ii) at least a majority in interest in each
4 partnership hold interests in or are members of another person,
5 other than an individual, and each partnership renders services
6 pursuant to an agreement with that other person, or (iii) one
7 partnership, directly or indirectly through one or more
8 intermediaries, controls, is controlled by, or is under common
9 control with, the other partnership.

10 (9) “Partnership” means an association of two or more persons
11 to carry on as coowners a business for profit formed under
12 Section 16202, predecessor law, or comparable law of another
13 jurisdiction, and includes, for all purposes of the laws of this
14 state, a registered limited liability partnership, and excludes any
15 partnership formed under Chapter 2 (commencing with Section
16 15501), Chapter 3 (commencing with Section 15611), or Chapter
17 5.5 (commencing with Section 15900).

18 (10) “Partnership agreement” means the agreement, whether
19 written, oral, or implied, among the partners concerning the
20 partnership, including amendments to the partnership agreement.

21 (11) “Partnership at will” means a partnership in which the
22 partners have not agreed to remain partners until the expiration of
23 a definite term or the completion of a particular undertaking.

24 (12) “Partnership interest” or “partner’s interest in the
25 partnership” means all of a partner’s interests in the partnership,
26 including the partner’s transferable interest and all management
27 and other rights.

28 (13) “Person” means an individual, corporation, business trust,
29 estate, trust, partnership, limited partnership, limited liability
30 partnership, limited liability company, association, joint venture,
31 government, governmental subdivision, agency, or
32 instrumentality, or any other legal or commercial entity.

33 (14) “Professional limited liability partnership services” means
34 the practice of architecture, the practice of public accountancy, or
35 the practice of law.

36 (15) “Property” means all property, real, personal, or mixed,
37 tangible or intangible, or any interest therein.

38 (16) “State” means a state of the United States, the District of
39 Columbia, the Commonwealth of Puerto Rico, or any territory or
40 insular possession subject to the jurisdiction of the United States.

1 (17) “Statement” means a statement of partnership authority
2 under Section 16303, a statement of denial under Section 16304,
3 a statement of dissociation under Section 16704, a statement of
4 dissolution under Section 16805, a statement of conversion or a
5 certificate of conversion under Section 16906, a statement of
6 merger under Section 16915, or an amendment or cancellation of
7 any of the foregoing.

8 (18) “Transfer” includes an assignment, conveyance, lease,
9 mortgage, deed, and encumbrance.

10 (19) The inclusion of the practice of architecture as a
11 professional limited liability partnership service permitted by this
12 section shall extend only until January 1, 2007.

13 SEC. 21.5. Section 16101 of the Corporations Code is
14 amended to read:

15 16101. As used in this chapter, the following terms and
16 phrases have the following meanings:

17 (1) “Business” includes every trade, occupation, and
18 profession.

19 (2) “Debtor in bankruptcy” means a person who is the subject
20 of either of the following:

21 (A) An order for relief under Title 11 of the United States
22 Code or a comparable order under a successor statute of general
23 application.

24 (B) A comparable order under federal, state, or foreign law
25 governing insolvency.

26 (3) “Distribution” means a transfer of money or other property
27 from a partnership to a partner in the partner’s capacity as a
28 partner or to the partner’s transferee.

29 (4) “Electronic transmission by the partnership” means a
30 communication (a) delivered by (1) facsimile telecommunication
31 or electronic mail when directed to the facsimile number or
32 electronic mail address, respectively, for that recipient on record
33 with the partnership, (2) posting on an electronic message board
34 or network that the partnership has designated for those
35 communications, together with a separate notice to the recipient
36 of the posting, which transmission shall be validly delivered
37 upon the later of the posting or delivery of the separate notice
38 thereof, or (3) other means of electronic communication, (b) to a
39 recipient who has provided an unrevoked consent to the use of
40 those means of transmission, and (c) that creates a record that is

1 capable of retention, retrieval, and review, and that may
2 thereafter be rendered into clearly legible tangible form.
3 However, an electronic transmission by a partnership to an
4 individual partner is not authorized unless, in addition to
5 satisfying the requirements of this section, the transmission
6 satisfies the requirements applicable to consumer consent to
7 electronic records as set forth in the Electronic Signatures in
8 Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

9 (5) “Electronic transmission to the partnership” means a
10 communication (a) delivered by (1) facsimile telecommunication
11 or electronic mail when directed to the facsimile number or
12 electronic mail address, respectively, which the partnership has
13 provided from time to time to partners for sending
14 communications to the partnership, (2) posting on an electronic
15 message board or network that the partnership has designated for
16 those communications, and which transmission shall be validly
17 delivered upon the posting, or (3) other means of electronic
18 communication, (b) as to which the partnership has placed in
19 effect reasonable measures to verify that the sender is the partner
20 (in person or by proxy) purporting to send the transmission, and
21 (c) that creates a record that is capable of retention, retrieval, and
22 review, and that may thereafter be rendered into clearly legible
23 tangible form.

24 (6) (A) “Foreign limited liability partnership” means a
25 partnership, other than a limited partnership, formed pursuant to
26 an agreement governed by the laws of another jurisdiction and
27 denominated or registered as a limited liability partnership or
28 registered limited liability partnership under the laws of that
29 jurisdiction (i) in which each partner is a licensed person or a
30 person licensed or authorized to provide professional limited
31 liability partnership services in a jurisdiction or jurisdictions
32 other than this state, (ii) which is licensed under the laws of the
33 state to engage in the practice of architecture, the practice of
34 public accountancy, or the practice of law, or (iii) which (I) is
35 related to a registered limited liability partnership that practices
36 public accountancy or, to the extent permitted by the State Bar,
37 practices law or is related to a foreign limited liability partnership
38 and (II) provides services related or complementary to the
39 professional limited liability partnership services provided by, or

1 provides services or facilities to, that registered limited liability
2 partnership or foreign limited liability partnership.

3 (B) For the purposes of clause (iii) of subparagraph (A), a
4 partnership is related to a registered limited liability partnership
5 or foreign limited liability partnership if (i) at least a majority of
6 the partners in one partnership are also partners in the other
7 partnership, or (ii) at least a majority in interest in each
8 partnership hold interests in or are members of another person,
9 except an individual, and each partnership renders services
10 pursuant to an agreement with that other person, or (iii) one
11 partnership, directly or indirectly through one or more
12 intermediaries, controls, is controlled by, or is under common
13 control with, the other partnership.

14 (7) “Licensed person” means any person who is duly licensed,
15 authorized, or registered under the provisions of the Business and
16 Professions Code to provide professional limited liability
17 partnership services or who is lawfully able to render
18 professional limited liability partnership services in this state.

19 (8) (A) “Registered limited liability partnership” means a
20 partnership, other than a limited partnership, formed pursuant to
21 an agreement governed by Article 10 (commencing with Section
22 16951), that is registered under Section 16953 and (i) each of the
23 partners of which is a licensed person or a person licensed or
24 authorized to provide professional limited liability partnership
25 services in a jurisdiction or jurisdictions other than this state, (ii)
26 is licensed under the laws of the state to engage in the practice of
27 architecture, practice of public accountancy, or the practice of
28 law, or (iii)(I) is related to a registered limited liability
29 partnership that practices public accountancy or, to the extent
30 permitted by the State Bar, practices law or is related to a foreign
31 limited liability partnership and (II) provides services related or
32 complementary to the professional limited liability partnership
33 services provided by, or provides services or facilities to, that
34 registered limited liability partnership or foreign limited liability
35 partnership.

36 (B) For the purposes of clause (iii) of subparagraph (A), a
37 partnership is related to a registered limited liability partnership
38 or foreign limited liability partnership if (i) at least a majority of
39 the partners in one partnership are also partners in the other
40 partnership, or (ii) at least a majority in interest in each

1 partnership hold interests in or are members of another person,
2 other than an individual, and each partnership renders services
3 pursuant to an agreement with that other person, or (iii) one
4 partnership, directly or indirectly through one or more
5 intermediaries, controls, is controlled by, or is under common
6 control with, the other partnership.

7 (9) “Partnership” means an association of two or more persons
8 to carry on as coowners a business for profit formed under
9 Section 16202, predecessor law, or comparable law of another
10 jurisdiction, and includes, for all purposes of the laws of this
11 state, a registered limited liability partnership, and excludes any
12 partnership formed under Chapter 2 (commencing with Section
13 15501), Chapter 3 (commencing with Section 15611), or Chapter
14 5.5 (commencing with Section 15900).

15 (10) “Partnership agreement” means the agreement, whether
16 written, oral, or implied, among the partners concerning the
17 partnership, including amendments to the partnership agreement.

18 (11) “Partnership at will” means a partnership in which the
19 partners have not agreed to remain partners until the expiration of
20 a definite term or the completion of a particular undertaking.

21 (12) “Partnership interest” or “partner’s interest in the
22 partnership” means all of a partner’s interests in the partnership,
23 including the partner’s transferable interest and all management
24 and other rights.

25 (13) “Person” means an individual, corporation, business trust,
26 estate, trust, partnership, limited partnership, limited liability
27 partnership, limited liability company, association, joint venture,
28 government, governmental subdivision, agency, or
29 instrumentality, or any other legal or commercial entity.

30 (14) “Professional limited liability partnership services” means
31 the practice of architecture, the practice of public accountancy, or
32 the practice of law.

33 (15) “Property” means all property, real, personal, or mixed,
34 tangible or intangible, or any interest therein.

35 (16) “State” means a state of the United States, the District of
36 Columbia, the Commonwealth of Puerto Rico, or any territory or
37 insular possession subject to the jurisdiction of the United States.

38 (17) “Statement” means a statement of partnership authority
39 under Section 16303, a statement of denial under Section 16304,
40 a statement of dissociation under Section 16704, a statement of

1 dissolution under Section 16805, a statement of conversion or a
2 certificate of conversion under Section 16906, a statement of
3 merger under Section 16915, or an amendment or cancellation of
4 any of the foregoing.

5 (18) “Transfer” includes an assignment, conveyance, lease,
6 mortgage, deed, and encumbrance.

7 (19) The inclusion of the practice of architecture as a
8 professional limited liability partnership service permitted by this
9 section shall extend only until January 1, 2012.

10 SEC. 22. Section 16901 of the Corporations Code is amended
11 to read:

12 16901. In this article, the following terms have the following
13 meanings:

14 (1) “Constituent other business entity” means any other
15 business entity that is merged with or into one or more
16 partnerships and includes a surviving other business entity.

17 (2) “Constituent partnership” means a partnership that is
18 merged with or into one or more other partnerships or other
19 business entities and includes a surviving partnership.

20 (3) “Disappearing other business entity” means a constituent
21 other business entity that is not the surviving other business
22 entity.

23 (4) “Disappearing partnership” means a constituent
24 partnership that is not the surviving partnership.

25 (5) “Domestic” means organized under the laws of this state
26 when used in relation to any partnership, other business entity, or
27 person (other than an individual).

28 (6) “Foreign other business entity” means any other business
29 entity formed under the laws of any state other than this state or
30 under the laws of the United States or of a foreign country.

31 (7) “Foreign partnership” means a partnership formed under
32 the laws of any state other than this state or under the laws of a
33 foreign country.

34 (8) “General partner” means a partner in a partnership and a
35 general partner in a limited partnership.

36 (9) “Limited liability company” means a limited liability
37 company created under Title 2.5 (commencing with Section
38 17000), or comparable law of another jurisdiction.

39 (10) “Limited partner” means a limited partner in a limited
40 partnership.

1 (11) “Limited partnership” means a limited partnership created
2 under Chapter 3 (commencing with Section 15611) or Chapter
3 5.5 (commencing with Section 15900), predecessor law, or
4 comparable law of another jurisdiction.

5 (12) “Other business entity” means a limited partnership,
6 limited liability company, corporation, business trust, real estate
7 investment trust, or an unincorporated association (other than a
8 nonprofit association), but excluding a partnership.

9 (13) “Partner” includes both a general partner and a limited
10 partner.

11 (14) “Surviving other business entity” means an other business
12 entity into which one or more partnerships are merged.

13 (15) “Surviving partnership” means a partnership into which
14 one or more other partnerships or other business entities are
15 merged.

16 SEC. 23. Section 16903 of the Corporations Code is amended
17 to read:

18 16903. (a) A partnership that desires to convert to a domestic
19 or foreign other business entity shall approve a plan of
20 conversion. The plan of conversion shall state the following:

21 (1) The terms and conditions of the conversion.

22 (2) The place of the organization of the converted entity and of
23 the converting partnership and the name of the converted entity
24 after conversion, if different from that of the converting
25 partnership.

26 (3) The manner of converting the partnership interests of each
27 of the partners into shares of, securities of, or interests in the
28 converted entity.

29 (4) The provisions of the governing documents for the
30 converted entity, including the limited partnership agreement,
31 limited liability company articles of organization and operating
32 agreement, or articles or certificate of incorporation if the
33 converted entity is a corporation, to which the holders of interest
34 in the converted entity are to be bound.

35 (5) Any other details or provisions as are required by laws
36 under which the converted entity is organized.

37 (6) Any other details or provisions that are desired.

38 (b) The plan of conversion shall be approved by that number
39 or percentage of partners required by the partnership agreement
40 to approve a conversion of the partnership as set forth in the

1 partnership agreement. If the partnership agreement fails to
2 specify the required partner approval for a conversion of the
3 partnership, the plan of conversion shall be approved by that
4 number or percentage of partners required by the partnership
5 agreement to approve an amendment to the partnership
6 agreement unless the conversion effects a change for which the
7 partnership agreement requires a greater number or percentage of
8 partners than that required to amend the partnership agreement,
9 in which case the plan of conversion shall be approved by that
10 greater number or percentage. If the partnership agreement fails
11 to specify the vote required to amend the partnership agreement,
12 the plan of conversion shall be approved by all partners.

13 (c) If the partnership is converting into a limited partnership,
14 in addition to the approval of the partners as set forth in
15 subdivision (b), the plan of conversion shall be approved by all
16 partners who will become general partners of the converted
17 limited partnership pursuant to the plan of conversion.

18 (d) All partners of the converting partnership except those that
19 dissociate upon effectiveness of the conversion pursuant to
20 subdivision (e) of Section 16909 shall be deemed parties to any
21 partnership or operating agreement, articles or certificate of
22 incorporation, or organic document for the converted entity
23 adopted as part of the plan of conversion, regardless of whether
24 that partner has executed the plan of conversion or the operating
25 agreement, articles or certificate of incorporation, partnership
26 agreement, or other organic document for the converted entity.
27 Any adoption of a new partnership or operating agreement,
28 articles or certificate of incorporation, or other organic document
29 made pursuant to the foregoing sentence shall be effective at the
30 effective time or date of the conversion.

31 (e) Notwithstanding its prior approval, a plan of conversion
32 may be amended before the conversion takes effect if the
33 amendment is approved by the partnership in the same manner,
34 and by the same number or percentage of partners, as was
35 required for approval of the original plan of conversion.

36 (f) The partners of a converting partnership may, at any time
37 before the conversion is effective, in their discretion, abandon a
38 conversion, without further approval by the partners, in the same
39 manner, and by the same number or percentage of partners, as
40 was required for approval of the original plan of conversion at

1 any time before the conversion is effective, subject to the
2 contractual rights of third parties.

3 (g) The converted entity shall keep the plan of conversion at:

4 (1) the principal place of business of the converted entity, if the
5 converted entity is a foreign other business entity or a
6 corporation; or (2) the office at which records are to be kept
7 under Section 15614 or 15901.14 if the converted entity is a
8 domestic limited partnership, or at the office at which records are
9 to be kept under Section 17057 if the converted entity is a
10 domestic limited liability company. Upon the request of a partner
11 of a converting partnership, the authorized person on behalf of
12 the converted entity shall promptly deliver to the partner or the
13 holder of interests or other securities, at the expense of the
14 converted entity, a copy of the plan of conversion. A waiver by a
15 partner of the rights provided in this subdivision shall be
16 unenforceable.

17 SEC. 24. Section 16908 of the Corporations Code is amended
18 to read:

19 16908. (a) A domestic limited partnership, limited liability
20 company, or corporation, or a foreign other business entity may
21 be converted to a domestic partnership pursuant to this article,
22 but only if the converting entity is authorized by the laws under
23 which it is organized to effect the conversion.

24 (b) An entity that desires to convert into a domestic
25 partnership shall approve a plan of conversion or the instrument
26 that is required to be approved to effect the conversion pursuant
27 to the laws under which the entity is organized.

28 (c) The conversion of a domestic limited partnership, limited
29 liability company, or corporation, or foreign other business entity
30 shall be approved by the number or percentage of the partners,
31 members, shareholders, or holders of interest of the converting
32 entity as is required by the law under which the entity is
33 organized, or a greater or lesser percentage (subject to applicable
34 laws) as set forth in the limited partnership agreement, articles of
35 organization, operating agreement, or articles or certificate of
36 organization, or other governing document for the converting
37 entity.

38 (d) The conversion by a domestic limited partnership, limited
39 liability company, or corporation, or a foreign other business
40 entity into a partnership shall be effective under this article at the

1 time that the conversion is effective under the laws under which
2 the converting entity is organized.

3 (e) The filing with the Secretary of State of a certificate of
4 conversion or a statement of partnership authority containing a
5 statement of conversion pursuant to subdivision (a) shall have the
6 effect of the filing of a certificate of cancellation by the
7 converting foreign limited partnership or foreign limited liability
8 company, and no converting foreign limited partnership or
9 foreign limited liability company that has made the filing is
10 required to file a certificate of cancellation under Section 15696,
11 15909.07, or 17455 as a result of that conversion. If a converting
12 other business entity is a foreign corporation qualified to transact
13 business in this state, the foreign corporation shall, by virtue of
14 the filing, automatically surrender its right to transact intrastate
15 business.

16 SEC. 25. Section 16911 of the Corporations Code is amended
17 to read:

18 16911. (a) Each partnership and other business entity which
19 desires to merge shall approve an agreement of merger. The
20 agreement of merger shall be approved by the number or
21 percentage of partners specified for merger in the partnership
22 agreement of the constituent partnership. If the partnership
23 agreement fails to specify the required partner approval for
24 merger of the constituent partnership, then the agreement of
25 merger shall be approved by that number or percentage of
26 partners specified by the partnership agreement to approve an
27 amendment to the partnership agreement. However, if the merger
28 effects a change for which the partnership agreement requires a
29 greater number or percentage of partners than that required to
30 amend the partnership agreement, then the merger shall be
31 approved by that greater number or percentage. If the partnership
32 agreement contains no provision specifying the vote required to
33 amend the partnership agreement, then the agreement of merger
34 must be approved by all the partners. The agreement of merger
35 shall be approved on behalf of each constituent other business
36 entity by those persons required to approve the merger by the
37 laws under which it is organized. Other persons may be parties to
38 the agreement of merger. The agreement of merger shall state all
39 of the following:

40 (1) The terms and conditions of the merger.

1 (2) The name and place of organization of the surviving
2 partnership or surviving other business entity, and of each
3 disappearing partnership and disappearing other business entity,
4 and the agreement of merger may change the name of the
5 surviving partnership, which new name may be the same as, or
6 similar to, the name of a disappearing partnership.

7 (3) The manner of converting the partnership interests of each
8 of the constituent partnerships into interests or other securities of
9 the surviving partnership or surviving other business entity, and
10 if partnership interests of any of the constituent partnerships are
11 not to be converted solely into interest or other securities of the
12 surviving partnership or surviving other business entity, the cash,
13 property, rights, interests, or securities which the holders of the
14 partnership interest are to receive in exchange for the partnership
15 interests, which cash, property, rights, interests, or securities may
16 be in addition to or in lieu of interests or other securities of the
17 surviving partnership or surviving other business entity, or that
18 the partnership interests are canceled without consideration.

19 (4) Any other details or provisions as are required by the laws
20 under which any constituent other business entity is organized.

21 (5) Any other details or provisions that are desired, including,
22 without limitation, a provision for the treatment of fractional
23 partnership interests.

24 (b) If the partnership is merging into a limited partnership,
25 then in addition to the approval of the partners as set forth under
26 subdivision (a), the agreement of merger must be approved by all
27 partners who will become general partners of the surviving
28 limited partnership upon the effectiveness of the merger.

29 (c) Notwithstanding its prior approval, an agreement of merger
30 may be amended before the merger takes effect if the amendment
31 is approved by the partners of each constituent partnership, in the
32 same manner as required for approval of the original agreement
33 of merger, and by each of the constituent other business entities.

34 (d) The partners of a constituent partnership may in their
35 discretion, abandon a merger, subject to the contractual rights, if
36 any, of third parties, including other constituent partnerships and
37 constituent other business entities, if the abandonment is
38 approved by the partners of the constituent partnership in the
39 same manner as required for approval of the original agreement
40 of merger.

1 (e) An agreement of merger approved in accordance with
2 subdivision (a) may (1) effect any amendment to the partnership
3 agreement of any domestic constituent partnership or (2) effect
4 the adoption of a new partnership agreement for a domestic
5 constituent partnership if it is the surviving partnership in the
6 merger. Any amendment to a partnership agreement or adoption
7 of a new partnership agreement made pursuant to the foregoing
8 sentence shall be effective at the effective time or date of the
9 merger.

10 (f) The surviving partnership or surviving other business entity
11 shall keep the agreement of merger at the principal place of
12 business of the surviving entity if the surviving entity is a
13 partnership or a foreign other business entity, at the office
14 referred to in Section 1500 if the surviving entity is a domestic
15 corporation, at the office referred to in subdivision (a) of Section
16 15614 or 15901.14 if the surviving entity is a domestic limited
17 partnership or at the office referred to in Section 17057 if the
18 surviving entity is a domestic limited liability company and,
19 upon the request of a partner of a constituent partnership or a
20 holder of interests or other securities of a constituent other
21 business entity, the authorized person on behalf of the
22 partnership or the surviving other business entity shall promptly
23 deliver to the partner or the holder of interests or other securities,
24 at the expense of the surviving partnership or surviving other
25 business entity, a copy of the agreement of merger. A waiver by
26 a partner or holder of interests or other securities of the rights
27 provided in this subdivision shall be unenforceable.

28 SEC. 26. Section 16915.5 of the Corporations Code is
29 amended to read:

30 16915.5. (a) Upon merger pursuant to this article, a surviving
31 domestic or foreign partnership or other business entity shall be
32 deemed to have assumed the liability of each disappearing
33 domestic or foreign partnership or other business entity that is
34 taxed under Part 10 (commencing with Section 17001) of, or
35 under Part 11 (commencing with Section 23001) of, Division 2
36 of the Revenue and Taxation Code for the following:

37 (1) To prepare and file, or to cause to be prepared and filed,
38 tax and information returns otherwise required of that
39 disappearing entity as specified in Chapter 2 (commencing with

1 Section 18501) of Part 10.2 of Division 2 of the Revenue and
2 Taxation Code.

3 (2) To pay any tax liability determined to be due.

4 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
5 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
6 15678.4, 15911.14, and 17552 of this code and Sections 17945,
7 17948.1, and 23334 of the Revenue and Taxation Code, if the
8 surviving entity is a domestic limited liability company, domestic
9 corporation, or registered limited liability partnership or a foreign
10 limited liability company, foreign limited liability partnership, or
11 foreign corporation that is registered or qualified to do business
12 in California, the Secretary of State shall file the merger without
13 the certificate of satisfaction of the Franchise Tax Board and
14 shall notify the Franchise Tax Board of the merger.

15 *SEC. 26.5. Section 16915.5 of the Corporations Code is*
16 *amended to read:*

17 16915.5. (a) Upon merger pursuant to this article, a surviving
18 domestic or foreign partnership or other business entity shall be
19 deemed to have assumed the liability of each disappearing
20 domestic or foreign partnership or other business entity that is
21 taxed under Part 10 (commencing with Section 17001) of, or
22 under Part 11 (commencing with Section 23001) of, Division 2
23 of the Revenue and Taxation Code for the following:

24 (1) To prepare and file, or to cause to be prepared and filed,
25 tax and information returns otherwise required of that
26 disappearing entity as specified in Chapter 2 (commencing with
27 Section 18501) of Part 10.2 of Division 2 of the Revenue and
28 Taxation Code.

29 (2) To pay any tax liability determined to be due.

30 (b) ~~Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,~~
31 ~~6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,~~
32 ~~15678.4, and 17552 of this code and Sections 17945, 17948.1,~~
33 ~~and 23334 of the Revenue and Taxation Code, if~~ *If* the surviving
34 entity is a domestic limited liability company, domestic
35 corporation, or registered limited liability partnership or a foreign
36 limited liability company, foreign limited liability partnership, or
37 foreign corporation that is registered or qualified to do business
38 in California, the Secretary of State shall ~~file the merger without~~
39 ~~the certificate of satisfaction of the Franchise Tax Board and~~
40 ~~shall~~ notify the Franchise Tax Board of the merger.

1 SEC. 27. Section 17001 of the Corporations Code is amended
2 to read:

3 17001. Unless the context otherwise indicates, the following
4 definitions govern the construction of this title:

5 (a) “Acknowledged” means that an instrument is either of the
6 following:

7 (1) Formally acknowledged as provided in Article 3
8 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
9 4 of Division 2 of the Civil Code.

10 (2) Executed to include substantially the following wording
11 preceding the signature: It is hereby declared that I am the person
12 who executed this instrument, which execution is my act and
13 deed.

14 Any certificate of acknowledgment taken without this state
15 before a notary public or a judge or clerk of a court of record
16 having an official seal need not be further authenticated.

17 (b) “Articles of organization” means articles of organization
18 filed under Section 17050, including all amendments thereto or
19 restatements thereof, or, in the case of a foreign limited liability
20 company, all documents that serve a like function under the laws
21 of the jurisdiction in which the foreign limited liability company
22 is organized.

23 (c) “Bankrupt” or “bankruptcy” means, with respect to any
24 person, being the subject of an order for relief under Title 11 of
25 the United States Code, or any successor statute or other statute
26 in any foreign jurisdiction having like import or effect.

27 (d) “Capital account” means, unless otherwise provided in the
28 operating agreement, the amount of the capital interest of a
29 member in the limited liability company consisting of that
30 member’s original contribution, as (1) increased by any
31 additional contributions and by that member’s share of the
32 limited liability company’s profits, and (2) decreased by any
33 distribution to that member and by that member’s share of the
34 limited liability company’s losses.

35 (e) “Constituent limited liability company” means a limited
36 liability company that is merged with or into one or more other
37 limited liability companies or other business entities and includes
38 a surviving limited liability company.

39 (f) “Constituent other business entity” means any other
40 business entity that is merged with or into one or more limited

1 liability companies and includes a surviving other business
2 entity.

3 (g) “Contribution” means any money, property, or services
4 rendered, or a promissory note or other binding obligation to
5 contribute money or property, or to render services as permitted
6 in this title, which a member contributes to a limited liability
7 company as capital in that member’s capacity as a member
8 pursuant to an agreement between the members, including an
9 agreement as to value.

10 (h) “Disappearing limited liability company” means a
11 constituent limited liability company that is not the surviving
12 limited liability company.

13 (i) “Disappearing other business entity” means a constituent
14 other business entity that is not the surviving other business
15 entity.

16 (j) “Distribution” means the transfer of money or property by
17 a limited liability company to its members without consideration.

18 (k) “Domestic” means organized under the laws of this state
19 when used in relation to any limited liability company, other
20 business entity or person (other than a natural person).

21 (l) “Domestic corporation” means a corporation as defined in
22 Section 162.

23 (m) “Domestic limited partnership” means a partnership
24 formed by two or more persons under the laws of this state and
25 having one or more general partners and one or more limited
26 partners.

27 (n) “Economic interest” means a person’s right to share in the
28 income, gains, losses, deductions, credit, or similar items of, and
29 to receive distributions from, the limited liability company, but
30 does not include any other rights of a member, including, without
31 limitation, the right to vote or to participate in management, or,
32 except as provided in Section 17106, any right to information
33 concerning the business and affairs of the limited liability
34 company.

35 (o) (1) “Electronic transmission by the limited liability
36 company” means a communication (a) delivered by (1) facsimile
37 telecommunication or electronic mail when directed to the
38 facsimile number or electronic mail address, respectively, for that
39 recipient on record with the limited liability company, (2) posting
40 on an electronic message board or network that the limited

1 liability company has designated for those communications,
2 together with a separate notice to the recipient of the posting,
3 which transmission shall be validly delivered upon the later of
4 the posting or delivery of the separate notice thereof, or (3) other
5 means of electronic communication, (b) to a recipient who has
6 provided an unrevoked consent to the use of those means of
7 transmission, and (c) that creates a record that is capable of
8 retention, retrieval, and review, and that may thereafter be
9 rendered into clearly legible tangible form. However, an
10 electronic transmission by a limited liability company to an
11 individual member is not authorized unless, in addition to
12 satisfying the requirements of this section, the transmission
13 satisfies the requirements applicable to consumer consent to
14 electronic records as set forth in the Electronic Signatures in
15 Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

16 (2) "Electronic transmission to the limited liability company"
17 means a communication (a) delivered by (1) facsimile
18 telecommunication or electronic mail when directed to the
19 facsimile number or electronic mail address, respectively, which
20 the limited liability company has provided from time to time to
21 members or managers for sending communications to the limited
22 liability company, (2) posting on an electronic message board or
23 network that the limited liability company has designated for
24 those communications, and which transmission shall be validly
25 delivered upon the posting, or (3) other means of electronic
26 communication, (b) as to which the limited liability company has
27 placed in effect reasonable measures to verify that the sender is
28 the member or manager (in person or by proxy) purporting to
29 send the transmission, and (c) that creates a record that is capable
30 of retention, retrieval, and review, and that may thereafter be
31 rendered into clearly legible tangible form.

32 (p) "Foreign corporation" means a corporation formed under
33 the laws of any state other than this state or under the laws of the
34 United States or of a foreign country.

35 (q) "Foreign limited liability company" means either (1) an
36 entity formed under the limited liability company laws of any
37 state other than this state, or (2) an entity organized under the
38 laws of any foreign country that is (A) an unincorporated
39 association, (B) organized under a statute pursuant to which an
40 association may be formed that affords each of its members

1 limited liability with respect to the liabilities of the entity, and
2 (C) not an entity that is required to be registered or qualified
3 pursuant to the provisions of Title 1 (commencing with Section
4 100) or Title 2 (commencing with Section 15001); but the term
5 “foreign limited liability company” does not include a foreign
6 association, as defined in Section 170.

7 (r) “Foreign limited partnership” means a partnership formed
8 under the laws of any state other than this state or under the laws
9 of a foreign country, including a limited liability limited
10 partnership, and having as partners one or more general partners
11 and one or more limited partners or their equivalents under any
12 name.

13 (s) “Foreign other business entity” means any other business
14 entity formed under the laws of any state other than this state or
15 under the laws of the United States or of a foreign country.

16 (t) “Limited liability company” or “domestic limited liability
17 company” means an entity having one or more members that is
18 organized under this title and is subject to the provisions of
19 Section 17101.

20 (u) “Mail” unless otherwise provided in the operating
21 agreement, means first-class mail, postage prepaid, unless
22 registered mail is specified. Registered mail includes certified
23 mail.

24 (v) “Majority in interest of the members,” unless otherwise
25 provided in the operating agreement, means more than 50 percent
26 of the interests of members in current profits of the limited
27 liability company.

28 (w) “Manager” means a person elected by the members of a
29 limited liability company to manage the limited liability
30 company if the articles of organization contain the statement
31 referred to in subdivision (b) of Section 17151 or, if the articles
32 of organization do not contain that statement, “manager” means
33 each of the members of the limited liability company.

34 (x) “Member” means a person who:

35 (1) Has been admitted to a limited liability company as a
36 member in accordance with the articles of organization or
37 operating agreement, or an assignee of an interest in a limited
38 liability company who has become a member pursuant to Section
39 17303.

1 (2) Has not resigned, withdrawn, or been expelled as a
2 member or, if other than an individual, been dissolved.

3 (y) “Member of record” means a member named as a member
4 on the list maintained in accordance with paragraph (1) of
5 subdivision (a) of Section 17058.

6 (z) “Membership interest” means a member’s rights in the
7 limited liability company, collectively, including the member’s
8 economic interest, any right to vote or participate in
9 management, and any right to information concerning the
10 business and affairs of the limited liability company provided by
11 this title.

12 (aa) “Officer” means any person elected or appointed pursuant
13 to Section 17154.

14 (ab) “Operating agreement” means any agreement, written or
15 oral, between all of the members as to the affairs of a limited
16 liability company and the conduct of its business in any manner
17 not inconsistent with law or the articles of organization,
18 including all amendments thereto, or, in the case of a foreign
19 limited liability company, all documents that serve a like
20 function under the laws of the jurisdiction in which the foreign
21 limited liability company is organized. The term “operating
22 agreement” may include, without more, an agreement between
23 all the members to organize a limited liability company pursuant
24 to the provisions of this title.

25 (ac) “Other business entity” means a corporation, limited
26 partnership, general partnership, business trust, real estate
27 investment trust, or an unincorporated association (other than a
28 nonprofit association), but excluding a domestic limited liability
29 company and a foreign limited liability company.

30 (ad) “Parent,” when used in relation to a specified limited
31 liability company, means a person who owns, directly or
32 indirectly, membership interests possessing more than 50 percent
33 of the voting power of the specified limited liability company.
34 When used in relation to a specified corporation or limited
35 partnership, the term “parent” shall have the meanings set forth
36 in Section 175 and subdivision (w) of Section 15611; *or*
37 *subdivision (v) of Section 15901.02* respectively.

38 (ae) “Person” means an individual, partnership, limited
39 partnership, trust, estate, association, corporation, limited liability
40 company, or other entity, whether domestic or foreign.

1 (af) [RESERVED]

2 (ag) [RESERVED]

3 (ah) [RESERVED]

4 (ai) “Proxy,” unless otherwise provided in the operating
5 agreement, means a written authorization signed or an electronic
6 transmission authorized by a member or the member’s
7 attorney-in-fact giving another person the power to exercise the
8 voting rights of that member. “Signed,” for the purpose of this
9 section, means the placing of the member’s name on the proxy
10 (whether by manual signature, typewriting, telegraphic or
11 electronic transmission, or otherwise) by the member or
12 member’s attorney-in-fact.

13 A proxy may be transmitted by an oral telephonic transmission
14 if it is submitted with information from which it may be
15 determined that the proxy was authorized by the member, or by
16 the member’s attorney-in-fact.

17 (aj) “Return of capital,” unless otherwise provided in the
18 operating agreement, means any distribution to a member to the
19 extent that the member’s capital account, immediately after the
20 distribution, is less than the amount of that member’s
21 contributions to the limited liability company as reduced by prior
22 distributions that were a return of capital.

23 (ak) “State” means a state, territory, or possession of the
24 United States, the District of Columbia, or the Commonwealth of
25 Puerto Rico.

26 (al) “Subsidiary of a specified limited liability company”
27 means a limited liability company or other business entity in
28 which shares, interests, or other securities possessing more than
29 50 percent of the voting power are owned by the specified
30 limited liability company.

31 (am) “Surviving limited liability company” means a limited
32 liability company into which one or more other limited liability
33 companies or other business entities are merged.

34 (an) “Surviving other business entity” means an other business
35 entity into which one or more limited liability companies are
36 merged.

37 (ao) “Time a notice is given or sent,” unless otherwise
38 expressly provided, means the time a written notice is deposited
39 in the United States mail; is personally delivered to the recipient,
40 is delivered to a common carrier for transmission, or is actually

1 transmitted by the person giving the notice by electronic
2 transmission, to the recipient; or the time any oral notice is
3 communicated, in person or by telephone, to the recipient or to a
4 person at the office of the recipient who the person giving the
5 notice has reason to believe will promptly communicate it to the
6 recipient.

7 (ap) "Transact intrastate business" means to enter into
8 repeated and successive transactions of business in this state,
9 other than in interstate or foreign commerce.

10 (1) Without excluding other activities which may not be
11 considered to be transacting intrastate business, a foreign limited
12 liability company shall not be considered to be transacting
13 intrastate business merely because its subsidiary transacts
14 intrastate business, or merely because of its status as any one or
15 more of the following:

16 (A) A shareholder of a domestic corporation.

17 (B) A shareholder of a foreign corporation transacting
18 intrastate business.

19 (C) A limited partner of a foreign limited partnership
20 transacting intrastate business.

21 (D) A limited partner of a domestic limited partnership.

22 (E) A member or manager of a foreign limited liability
23 company transacting intrastate business.

24 (F) A member or manager of a domestic limited liability
25 company.

26 (2) Without excluding other activities which may not be
27 considered to be transacting intrastate business, a foreign limited
28 liability company shall not be considered to be transacting
29 intrastate business within the meaning of this subdivision solely
30 by reason of carrying on in this state any one or more of the
31 following activities:

32 (A) Maintaining or defending any action or suit or any
33 administrative or arbitration proceeding, or effecting the
34 settlement thereof, or the settlement of claims or disputes.

35 (B) Holding meetings of its managers or members or carrying
36 on any other activities concerning its internal affairs.

37 (C) Maintaining bank accounts.

38 (D) Maintaining offices or agencies for the transfer, exchange,
39 and registration of the foreign limited liability company's

1 securities or maintaining trustees or depositaries with respect to
2 those securities.

3 (E) Effecting sales through independent contractors.

4 (F) Soliciting or procuring orders, whether by mail or through
5 employees or agents or otherwise, where those orders require
6 acceptance without this state before becoming binding contracts.

7 (G) Creating or acquiring evidences of debt or mortgages,
8 liens, or security interests in real or personal property.

9 (H) Securing or collecting debts or enforcing mortgages and
10 security interests in property securing the debts.

11 (I) Conducting an isolated transaction that is completed within
12 180 days and not in the course of a number of repeated
13 transactions of a like nature.

14 (3) A person shall not be deemed to be transacting intrastate
15 business in this state merely because of its status as a member or
16 manager of a domestic limited liability company or a foreign
17 limited liability company registered to transact intrastate business
18 in this state.

19 (aq) "Vote" includes authorization by written consent.

20 (ar) "Voting power" means the power to vote on any matter at
21 the time any determination of voting power is made and does not
22 include the right to vote upon the happening of some condition or
23 event which has not yet occurred.

24 (as) "Withdrawal" includes the resignation or retirement of a
25 member as a member.

26 (at) "Written" or "in writing" includes facsimile, telegraphic,
27 and other electronic communication as authorized by this code.

28 SEC. 28. Section 17540.3 of the Corporations Code is
29 amended to read:

30 17540.3. (a) A limited liability company that desires to
31 convert to an other business entity or a foreign other business
32 entity or a foreign limited liability company shall approve a plan
33 of conversion.

34 The plan of conversion shall state all of the following:

35 (1) The terms and conditions of the conversion.

36 (2) The place of the organization of the converted entity and of
37 the converting limited liability company and the name of the
38 converted entity after conversion.

1 (3) The manner of converting the membership interests of
2 each of the members into securities of, shares of, or interests in,
3 the converted entity.

4 (4) The provisions of the governing documents for the
5 converted entity, including the articles or certificate of
6 incorporation if the converted entity is a domestic or foreign
7 corporation, the partnership agreement, or the limited liability
8 company articles of organization and operating agreement, to
9 which the holders of interests in the converted entity are to be
10 bound.

11 (5) Any other details or provisions that are required by the
12 laws under which the converted entity is organized, or that are
13 desired by the parties.

14 (b) The plan of conversion shall be approved by a vote of a
15 majority in interest of the members of the converting limited
16 liability company, or a greater percentage of the voting interests
17 of members as may be specified in the articles of organization or
18 written operating agreement of the converting limited liability
19 company. However, if the members of the limited liability
20 company would become personally liable for any obligations of
21 the converted entity as a result of the conversion, the plan of
22 conversion shall be approved by all of the members of the
23 converting limited liability company, unless the plan of
24 conversion provides that all members will have dissenters' rights
25 as provided in Chapter 13 (commencing with Section 17600).

26 (c) If the limited liability company is converting into a limited
27 partnership, then in addition to the approval of the members set
28 forth in subdivision (b), the plan of conversion shall be approved
29 by those members who will become general partners of the
30 converted limited partnership pursuant to the plan of conversion.

31 (d) Upon the effectiveness of the conversion, all members of
32 the converting limited liability company, except those that
33 exercise dissenters' rights as provided in Chapter 13
34 (commencing with Section 17600), shall be deemed parties to
35 any governing documents for the converted entity adopted as part
36 of the plan of conversion, irrespective of whether or not a
37 member has executed the plan of conversion or the governing
38 documents for the converted entity. Any adoption of governing
39 documents made pursuant thereto shall be effective at the
40 effective time or date of the conversion.

1 (e) Notwithstanding its prior approval, a plan of conversion
2 may be amended before the conversion takes effect if the
3 amendment is approved by the members of the converting
4 limited liability company in the same manner as was required for
5 approval of the original plan of conversion.

6 (f) A plan of conversion may be abandoned by the members of
7 a converting limited liability company in the manner as required
8 for approval of the plan of conversion, subject to the contractual
9 rights of third parties, at any time before the conversion is
10 effective.

11 (g) The converted entity shall keep the plan of conversion at
12 the principal place of business of the converted entity if the
13 converted entity is a domestic partnership or foreign other
14 business entity, at the principal executive office of or registrar or
15 transfer agent of the converted entity if the converted entity is a
16 domestic corporation, or at the office at which records are to be
17 kept under Section 15614 or 15901.14 if the converted entity is a
18 domestic limited partnership. Upon the request of a member of a
19 converting limited liability company, the authorized person on
20 behalf of the converted entity shall promptly deliver to the
21 member or the holder of interests, shares, or other securities, at
22 the expense of the converted entity, a copy of the plan of
23 conversion. A waiver by a member of the rights provided in this
24 subdivision shall be unenforceable.

25 SEC. 29. Section 17540.8 of the Corporations Code is
26 amended to read:

27 17540.8. (a) An other business entity or a foreign other
28 business entity or a foreign limited liability company may be
29 converted to a domestic limited liability company pursuant to this
30 chapter only if the converting entity is authorized by the laws
31 under which it is organized to effect the conversion.

32 (b) An other business entity or a foreign other business entity
33 or a foreign limited liability company that desires to convert into
34 a domestic limited liability company shall approve a plan of
35 conversion or an other instrument as is required to be approved to
36 effect the conversion pursuant to the laws under which that entity
37 is organized.

38 (c) The conversion of an other business entity or a foreign
39 other business entity or a foreign limited liability company into a
40 domestic limited liability company shall be approved by that

1 number or percentage of the partners, members, shareholders, or
2 holders of interest of the converting entity as is required by the
3 laws under which that entity is organized, or a greater or lesser
4 percentage, subject to applicable laws, as set forth in the
5 converting entity's partnership agreement, articles of
6 organization, operating agreement, articles or certificate of
7 incorporation, or other governing document.

8 (d) The conversion by an other business entity or a foreign
9 other business entity or a foreign limited liability company into a
10 domestic limited liability company shall be effective under this
11 chapter at the time the conversion is effective under the laws
12 under which the converting entity is organized as long as the
13 articles of organization containing a statement of conversion
14 have been filed with the Secretary of State. If the converting
15 entity's governing law is silent as to the effectiveness of the
16 conversion, the conversion shall be effective upon the completion
17 of all acts required under this title to form a limited liability
18 company.

19 (e) The filing with the Secretary of State of a certificate of
20 conversion or articles of organization containing a statement of
21 conversion pursuant to subdivision (a) shall have the effect of the
22 filing of a certificate of cancellation by the converting foreign
23 limited liability company or foreign limited partnership, and no
24 converting foreign limited liability company or foreign limited
25 partnership that has made the filing is required to file a certificate
26 of cancellation under Section 15696, 15909.07, or 17455 as a
27 result of that conversion. If a converting other business entity is a
28 foreign corporation qualified to transact business in this state, the
29 foreign corporation shall, by virtue of the filing, automatically
30 surrender its right to transact intrastate business.

31 SEC. 30. Section 17554.5 of the Corporations Code is
32 amended to read:

33 17554.5. (a) Upon merger pursuant to this chapter, a
34 surviving domestic or foreign limited liability company or other
35 business entity shall be deemed to have assumed the liability of
36 each disappearing domestic or foreign limited liability company
37 or other business entity that is taxed under Part 10 (commencing
38 with Section 17001) of, or under Part 11 (commencing with
39 Section 23001) of, Division 2 of the Revenue and Taxation Code
40 for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, 15911.14, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.

SEC. 30.5. Section 17554.5 of the Corporations Code is amended to read:

17554.5. (a) Upon merger pursuant to this chapter, a surviving domestic or foreign limited liability company or other business entity shall be deemed to have assumed the liability of each disappearing domestic or foreign limited liability company or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in Chapter 2 (commencing with Section 18501) of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) ~~Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if~~ If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or

1 foreign corporation that is registered or qualified to do business
2 in California, the Secretary of State shall ~~file the merger without~~
3 ~~the certificate of satisfaction of the Franchise Tax Board and~~
4 ~~shall~~ notify the Franchise Tax Board of the merger.

5 SEC. 31. Section 17555 of the Corporations Code is amended
6 to read:

7 17555. (a) The merger of any number of domestic limited
8 liability companies with any number of foreign limited liability
9 companies or foreign other business entities shall be required to
10 comply with Section 17550.

11 (b) If the surviving entity is a domestic limited liability
12 company or a domestic other business entity, the merger
13 proceedings with respect to that limited liability company or
14 other business entity and any domestic disappearing limited
15 liability company shall conform to the provisions of this chapter
16 governing the merger of domestic limited liability companies, but
17 if the surviving entity is a foreign limited liability company or a
18 foreign other business entity, then, subject to the requirements of
19 subdivision (d) and Chapter 13 (commencing with Section
20 17600), with respect to any domestic constituent corporation,
21 Section 1113 and Chapters 12 (commencing with Section 1200)
22 and 13 (commencing with Section 1300) of Division 1 of Title 1,
23 and with respect to any domestic constituent limited partnership,
24 Article 7.6 (commencing with Section 15679.1) of Chapter 3 and
25 Article 11.5 (commencing with Section 15911.20) of Chapter 5.5
26 of Title 2, the merger proceedings may be in accordance with the
27 laws of the state or place of organization of the surviving limited
28 liability company or surviving other business entity.

29 (c) If the surviving entity is a domestic limited liability
30 company or domestic other business entity, other than a domestic
31 corporation, a certificate of merger shall be filed as provided in
32 subdivision (a) of Section 17552 and thereupon, subject to
33 subdivision (a) of Section 17553, the merger shall be effective as
34 to each domestic constituent limited liability company and
35 domestic constituent other business entity. If the surviving entity
36 is a domestic corporation, the agreement of merger with
37 attachments shall be filed as provided in subdivision (b) of
38 Section 17552, and thereupon, subject to subdivision (a) of
39 Section 17553, the merger shall be effective as to each domestic
40 constituent limited liability company and domestic constituent

1 other business entity unless another effective date is provided for
2 in Chapter 11 (commencing with Section 1100) of Division 1 of
3 Title 1, with respect to any constituent corporation or any
4 constituent other business entity.

5 (d) If the surviving entity is a foreign limited liability company
6 or foreign other business entity, the merger shall become
7 effective in accordance with the laws of the jurisdiction in which
8 the surviving limited liability company or surviving other
9 business entity is organized; but the merger shall be effective as
10 to any domestic disappearing limited liability company as of the
11 time of effectiveness in the foreign jurisdiction upon the filing in
12 this state of a certificate of merger or agreement of merger as
13 provided in Section 17552.

14 (e) If a merger described in subdivision (c) or (d) also includes
15 a foreign disappearing limited liability company previously
16 registered for the transaction of intrastate business in this state
17 pursuant to Section 17451, the filing of the certificate of merger
18 or agreement of merger, as applicable, automatically has the
19 effect of a cancellation of registration for that foreign limited
20 liability company pursuant to Section 17456 without the
21 necessity of the filing of a certificate of cancellation.

22 (f) The provisions of subdivision (b) of Section 17551 and
23 Chapter 13 (commencing with Section 17600) apply to the rights
24 of the members of any of the constituent limited liability
25 companies that are domestic limited liability companies and of
26 any domestic limited liability company that is a parent of any
27 foreign constituent limited liability company.

28 (g) If the surviving entity is a foreign limited liability company
29 or foreign other business entity, the surviving entity shall file the
30 following with the Secretary of State:

31 (1) An agreement that it may be served in this state in a
32 proceeding for the enforcement of an obligation of any
33 constituent entity and in a proceeding to enforce the rights of any
34 holder of a dissenting interest or dissenting shares in a
35 constituent domestic limited liability company or domestic other
36 business entity.

37 (2) An irrevocable appointment of the Secretary of State as its
38 agent for service of process, and an address to which process
39 may be forwarded.

1 (3) An agreement that it will promptly pay the holder of any
2 dissenting interest or dissenting share in a constituent domestic
3 limited liability company or domestic other business entity the
4 amount to which that person is entitled under California law.

5 SEC. 32. Section 25005.1 of the Corporations Code is
6 amended to read:

7 25005.1. "Entity conversion transaction" means a conversion
8 pursuant to Section 1151, 1157, 15677.2, 15677.8, 15911.02,
9 15911.08, 16902, 16908, 17540.2, 17540.8, or a conversion that
10 occurs entirely out of state, unless the interests in the entity
11 resulting from the conversion to be held by the equity holders of
12 the entity being converted as a result of the conversion are not
13 securities. For purposes of Sections 25103 and 25120 an entity
14 conversion transaction is not a change in the rights, preferences,
15 privileges, or restrictions of or on outstanding securities or an
16 exchange of securities by the issuer with its existing security
17 holders exclusively.

18 SEC. 33. Section 12188 of the Government Code is repealed.

19 SEC. 34. Section 12188 is added to the Government Code, to
20 read:

21 12188. The limited partnership filing fees are the following:

22 (a) Issuing a certificate of reservation of limited partnership
23 name: ten dollars (\$10).

24 (b) Filing a certificate of limited partnership of a limited
25 partnership: seventy dollars (\$70).

26 (c) Filing an application for registration as a foreign limited
27 partnership: seventy dollars (\$70).

28 (d) Filing a certificate of amendment to the certificate of
29 limited partnership of a limited partnership: thirty dollars (\$30).

30 (e) Filing a restated certificate of limited partnership of a
31 limited partnership: thirty dollars (\$30).

32 (f) Filing an amendment to the application for registration of a
33 foreign limited partnership: thirty dollars (\$30).

34 (g) Filing a certificate of correction for a limited partnership or
35 a foreign limited partnership: thirty dollars (\$30).

36 (h) Filing a certificate of revival for a limited partnership:
37 thirty dollars (\$30).

38 (i) Filing a certificate of merger solely with one or more other
39 limited partnerships (not including the merger of one or more

1 limited partnerships with one or more other business entities) the
2 fee for filing a certificate of merger: seventy dollars (\$70).

3 (j) Filing a certificate of merger of one or more limited
4 partnerships with one or more other business entities: one
5 hundred fifty dollars (\$150).

6 (k) Filing a certificate of conversion of a limited partnership
7 into a foreign other business entity or general partnership: thirty
8 dollars (\$30).

9 (l) Filing articles of organization or statement of partnership
10 authority containing a statement of conversion of a limited
11 partnership into a domestic limited liability company or a
12 registered general partnership: seventy dollars (\$70).

13 (m) Filing the substitute service of a limited partnership: fifty
14 dollars (\$50).

15 (n) Filing a certificate of cancellation for a limited partnership
16 or a foreign limited partnership: no fee.

17 (o) Filing a statement of ~~registration~~ *resignation* as an agent
18 for service of process: no fee.

19 (p) Filing any instrument by or on behalf of a limited
20 partnership unless another fee is specified or the law specifies
21 that no fee is to be charged: thirty dollars (\$30).

22 SEC. 35. Section 12197 of the Government Code is amended
23 to read:

24 12197. The Secretary of State shall charge and collect, as
25 applicable, fees for the following:

26 (a) Service of process, as provided in Section 15800 of the
27 Corporations Code, for every partnership other than a foreign
28 limited partnership subject to Article 9 (commencing with
29 Section 15691) of Chapter 3 or Article 9 (commencing with
30 Section 15909.01) of Chapter 5.5 of Title 2 of the Corporations
31 Code or a commercial banking partnership established and
32 transacting business in a place without the United States, which
33 is domiciled without this state and has no regular place of
34 business within the state: Fifty dollars (\$50).

35 (b) Service of process for each registered limited liability
36 partnership whose principal office is not in this state and each
37 foreign limited liability partnership registered under Section
38 16959 of the Corporations Code: Fifty dollars (\$50).

39 (c) Acceptance of copies of process against a corporation,
40 firm, partnership, limited liability company, association, business

1 trust, or natural person: Fifty dollars (\$50), unless another fee is
2 specified by law or the law specifies that no fee is to be charged.

3 (d) Filing a statement of resignation as an agent pursuant to
4 paragraph (2) of subdivision (d) of Section 17061 of the
5 Corporations Code for an individual or entity previously
6 designated as an agent for service of process by a limited liability
7 company: No fee.

8 SEC. 36. Section 17935 of the Revenue and Taxation Code is
9 amended to read:

10 17935. (a) For each taxable year beginning on or after
11 January 1, 1997, every limited partnership doing business in this
12 state (as defined by Section 23101) and required to file a return
13 under Section 18633 shall pay annually to this state a tax for the
14 privilege of doing business in this state in an amount equal to the
15 applicable amount specified in Section 23153.

16 (b) (1) In addition to any limited partnership that is doing
17 business in this state and therefore is subject to the tax imposed
18 by subdivision (a), for each taxable year beginning on or after
19 January 1, 1997, every limited partnership that has executed,
20 acknowledged, and filed a certificate of limited partnership with
21 the Secretary of State pursuant to Section 15621 or 15902.01 of
22 the Corporations Code, and every foreign limited partnership that
23 has registered with the Secretary of State pursuant to Section
24 15692 or 15909.01 of the Corporations Code, shall pay annually
25 the tax prescribed in subdivision (a). The tax shall be paid for
26 each taxable year, or part thereof, until a certificate of
27 cancellation is filed on behalf of the limited partnership with the
28 office of the Secretary of State pursuant to Section 15623, 15696,
29 15902.03, or 15909.07 of the Corporations Code.

30 (2) If a taxpayer files a return with the Franchise Tax Board
31 that is designated its final return, that board shall notify the
32 taxpayer that the tax imposed by this chapter is due annually until
33 a certificate of cancellation is filed with the Secretary of State
34 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the
35 Corporations Code.

36 (c) The tax imposed by this chapter shall be due and payable
37 on the date the return is required to be filed under former Section
38 18432 or 18633.

39 (d) For purposes of this section, "limited partnership" means
40 any partnership formed by two or more persons under the laws of

1 this state or any other jurisdiction and having one or more
2 general partners and one or more limited partners.

3 (e) Notwithstanding subdivision (b), any limited partnership
4 that ceased doing business prior to January 1, 1997, filed a final
5 return with the Franchise Tax Board for a taxable year ending
6 before January 1, 1997, and filed a certificate of dissolution with
7 the Secretary of State pursuant to Section 15623 of the
8 Corporations Code prior to January 1, 1997, shall not be subject
9 to the tax imposed by this chapter for any period following the
10 date the certificate of dissolution was filed with the Secretary of
11 State, but only if the limited partnership files a certificate of
12 cancellation with the Secretary of State pursuant to Section
13 15623 of the Corporations Code. In the case where a notice of
14 proposed deficiency assessment of tax or a notice of tax due
15 (whichever is applicable) is mailed after January 1, 2001, the first
16 sentence of this subdivision shall not apply unless the certificate
17 of cancellation is filed with the Secretary of State not later than
18 60 days after the date of the mailing of the notice.

19 SEC. 37. Nothing in this act shall be construed to affect or
20 overturn any decision of law or existing statute regarding the
21 liability of limited partners. Except as provided herein, nothing in
22 this act shall be construed to affect any existing statute pertaining
23 to limited liability partnerships and limited liability companies.
24 This act does not permit the formation of limited liability limited
25 partnerships in this state.

26 SEC. 38. Section 21.5 of this bill incorporates amendments to
27 Section 16101 of the Corporations Code proposed by both this
28 bill and AB 2914. It shall only become operative if (1) both bills
29 are enacted and become effective on or before January 1, 2007,
30 (2) each bill amends Section 16101 of the Corporations Code,
31 and (3) this bill is enacted after AB 2914, in which case Section
32 21 of this bill shall not become operative.

33 *SEC. 39. (a) Section 6.5 of this bill incorporates amendments*
34 *to Section 1107.5 of the Corporations Code proposed by both*
35 *this bill and AB 2341. It shall only become operative if (1) both*
36 *bills are enacted and become effective on or before January 1,*
37 *2007, but AB 2341 becomes operative first (2) each bill amends*
38 *Section 1107.5 of the Corporations Code, and (3) this bill is*
39 *enacted after AB 2341, in which case Section 1107.5 of the*
40 *Corporations Code as amended by AB 2341, shall remain*

1 *operative only until the operative date of this bill, at which time*
2 *Section 6.5 of this bill shall become operative, and Section 6 of*
3 *this bill shall not become operative.*

4 *(b) Section 7.5 of this bill incorporates amendments to Section*
5 *1113 of the Corporations Code proposed by both this bill and AB*
6 *2341. It shall only become operative if (1) both bills are enacted*
7 *and become effective on or before January 1, 2007, but AB 2341*
8 *becomes operative first (2) each bill amends Section 1113 of the*
9 *Corporations Code, and (3) this bill is enacted after AB 2341, in*
10 *which case Section 1113 of the Corporations Code as amended*
11 *by AB 2341, shall remain operative only until the operative date*
12 *of this bill, at which time Section 7.5 of this bill shall become*
13 *operative, and Section 7 of this bill shall not become operative.*

14 *(c) Section 11.5 of this bill incorporates amendments to*
15 *Section 6019.1 of the Corporations Code proposed by both this*
16 *bill and AB 2341. It shall only become operative if (1) both bills*
17 *are enacted and become effective on or before January 1, 2007,*
18 *but AB 2341 becomes operative first (2) each bill amends Section*
19 *6019.1 of the Corporations Code, and (3) this bill is enacted*
20 *after AB 2341, in which case Section 6019.1 of the Corporations*
21 *Code as amended by AB 2341, shall remain operative only until*
22 *the operative date of this bill, at which time Section 11.5 of this*
23 *bill shall become operative, and Section 11 of this bill shall not*
24 *become operative.*

25 *(d) Section 12.5 of this bill incorporates amendments to*
26 *Section 6020.5 of the Corporations Code proposed by both this*
27 *bill and AB 2341. It shall only become operative if (1) both bills*
28 *are enacted and become effective on or before January 1, 2007,*
29 *but AB 2341 becomes operative first (2) each bill amends Section*
30 *6020.5 of the Corporations Code, and (3) this bill is enacted*
31 *after AB 2341, in which case Section 6020.5 of the Corporations*
32 *Code as amended by AB 2341, shall remain operative only until*
33 *the operative date of this bill, at which time Section 12.5 of this*
34 *bill shall become operative, and Section 12 of this bill shall not*
35 *become operative.*

36 *(e) Section 13.5 of this bill incorporates amendments to*
37 *Section 8019.1 of the Corporations Code proposed by both this*
38 *bill and AB 2341. It shall only become operative if (1) both bills*
39 *are enacted and become effective on or before January 1, 2007,*
40 *but AB 2341 becomes operative first (2) each bill amends Section*

1 8019.1 of the Corporations Code, and (3) this bill is enacted
2 after AB 2341, in which case Section 8019.1 of the Corporations
3 Code as amended by AB 2341, shall remain operative only until
4 the operative date of this bill, at which time Section 13.5 of this
5 bill shall become operative, and Section 13 of this bill shall not
6 become operative.

7 (f) Section 14.5 of this bill incorporates amendments to
8 Section 8020.5 of the Corporations Code proposed by both this
9 bill and AB 2341. It shall only become operative if (1) both bills
10 are enacted and become effective on or before January 1, 2007,
11 but AB 2341 becomes operative first (2) each bill amends Section
12 8020.5 of the Corporations Code, and (3) this bill is enacted
13 after AB 2341, in which case Section 8020.5 of the Corporations
14 Code as amended by AB 2341, shall remain operative only until
15 the operative date of this bill, at which time Section 14.5 of this
16 bill shall become operative, and Section 14 of this bill shall not
17 become operative.

18 (g) Section 15.5 of this bill incorporates amendments to
19 Section 12540.1 of the Corporations Code proposed by both this
20 bill and AB 2341. It shall only become operative if (1) both bills
21 are enacted and become effective on or before January 1, 2007,
22 but AB 2341 becomes operative first (2) each bill amends Section
23 12540.1 of the Corporations Code, and (3) this bill is enacted
24 after AB 2341, in which case Section 12540.1 of the
25 Corporations Code as amended by AB 2341, shall remain
26 operative only until the operative date of this bill, at which time
27 Section 15.5 of this bill shall become operative, and Section 15 of
28 this bill shall not become operative.

29 (h) Section 16.5 of this bill incorporates amendments to
30 Section 12550.5 of the Corporations Code proposed by both this
31 bill and AB 2341. It shall only become operative if (1) both bills
32 are enacted and become effective on or before January 1, 2007,
33 but AB 2341 becomes operative first (2) each bill amends Section
34 12550.5 of the Corporations Code, and (3) this bill is enacted
35 after AB 2341, in which case Section 12550.5 of the
36 Corporations Code as amended by AB 2341, shall remain
37 operative only until the operative date of this bill, at which time
38 Section 16.5 of this bill shall become operative, and Section 16 of
39 this bill shall not become operative.

(i) Section 26.5 of this bill incorporates amendments to Section 16915.5 of the Corporations Code proposed by both this bill and AB 2341. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but AB 2341 becomes operative first (2) each bill amends Section 16915.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 16915.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 26.5 of this bill shall become operative, and Section 26 of this bill shall not become operative.

(j) Section 30.5 of this bill incorporates amendments to Section 17554.5 of the Corporations Code proposed by both this bill and AB 2341. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but AB 2341 becomes operative first (2) each bill amends Section 17554.5 of the Corporations Code, and (3) this bill is enacted after AB 2341, in which case Section 17554.5 of the Corporations Code as amended by AB 2341, shall remain operative only until the operative date of this bill, at which time Section 30.5 of this bill shall become operative, and Section 30 of this bill shall not become operative.

CORRECTIONS:

Text - Pages 73, 128, 184 and 195.